

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 versus

5 JOAQUÍN ARCHIVALDO GUZMÁN LOERA,

6 Defendant.

09 CR 466 (BMC)

United States Courthouse  
Brooklyn, New York

February 4, 2019

9:30 a. m.

7  
8 TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL  
9 BEFORE THE HONORABLE BRIAN M. COGAN  
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES

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21 Narcotic and Dangerous Drug Section  
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Reported by:

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Proceedings recorded by mechanical stenography. Transcript  
produced by computer-aided transcription.

Lisa Schmid, CCR, RMR  
Official Court Reporter

PROCEEDINGS

(In open court, outside the presence of the jury.)

THE CLERK: All rise.

All rise.

THE COURT: Good morning. Have a seat, please.

Someone wanted to talk to me about something?

MR. LICHTMAN: Yes, Judge, if we can approach?

THE COURT: Okay. We can approach.

(Sealed Sidebar.)

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2 MR. LICHTMAN: [REDACTED]

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MS. PARLOVECCHIO:

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9 MR. LICHTMAN: [REDACTED]  
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14 THE COURT: [REDACTED]  
15 MR. LICHTMAN: [REDACTED]  
16 THE COURT: [REDACTED]  
17 MR. LICHTMAN: [REDACTED]  
18 [REDACTED]  
19 MS. PARLOVECCHIO: [REDACTED]  
20 THE COURT: [REDACTED]  
21 MR. LICHTMAN: [REDACTED]  
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THE COURT:

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17 MR. LICHTMAN: [REDACTED]  
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9 MR. LICHTMAN: [REDACTED]  
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12 THE COURT: [REDACTED]  
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15 MS. PARLOVECCHIO: [REDACTED]  
16 THE COURT: [REDACTED]  
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MR. LICHTMAN:

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6 MS. PARLOVECCHIO: [REDACTED]

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9 THE COURT: [REDACTED]

10 MS. PARLOVECCHIO: [REDACTED]

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15 MR. LICHTMAN: [REDACTED]

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19 THE COURT: [REDACTED]

20 MR. LICHTMAN: [REDACTED]

21 THE COURT: [REDACTED]

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23 MR. LICHTMAN: [REDACTED]

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25 THE COURT: [REDACTED]

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4 MR. LICHTMAN: [REDACTED]

5 THE COURT: [REDACTED]

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7 (Continued on the next page.)

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PROCEEDINGS

1 (In open court.)

2 THE COURT: The discussion at sidebar just now is  
3 going to be sealed from the public record, based on my finding  
4 that sealing is necessary under these circumstances to protect  
5 the integrity of the deliberations of the jury.

6 I can't be more specific than that without causing the  
7 harm that I'm seeking to prevent by sealing. So I will note  
8 that that is my public finding as to why this sidebar is being  
9 sealed.

10 All right. We're going to recess for five minutes.

11 (Recess.)

12 THE CLERK: All rise.

13 THE COURT: Be seated, please.

14 All right. Having reviewed again the case law on the  
15 issue discussed at sidebar, I'm going to proceed to what the  
16 Second Circuit refers to as the step two of the inquiry, but I  
17 am going to address the jurors anyone initially as a group *in*  
18 *camera*.

19 It seems to me that in order to address individual  
20 jurors, in order to inquire to that, there has to be some  
21 indication that one or more of them were, in fact, exposed to  
22 the questionable material, and we have nothing to suggest that  
23 in this case at all.

24 In fact, we know that I've been instructing this jury  
25 every single day to stay away from all media coverage of the

PROCEEDINGS

1 case. We know that at least one juror, when her son slipped up  
2 and said something to her about the case, she came and reported  
3 to it Ms. Clarke immediately.

4 And we know that when we had a similar, although  
5 admittedly not as severe issue involving some press coverage of  
6 Mr. Lichtman, I did proceeded in the way I'm going to proceed  
7 now, in front of the jury, and there was no question that the  
8 jury had not seen the offensive or suspect article.

9 It seems to me that I have a very good rapport with  
10 this jury. I think I know how to talk to a jury. Doing it *in*  
11 *camera*, where I can look each one of them in the face and get  
12 an answer from them seems to me a very sure way of taking down  
13 any inhibitions they might have about disclosing something they  
14 shouldn't have done.

15 I'm going to make it clear to them they're not in any  
16 trouble. I just need to know this has happened, and I think  
17 the parties can count on me -- and they'll see the transcript  
18 to do a thorough examination and make sure that this is not an  
19 issue.

20 If I discover as to one or more jurors that it is an  
21 issue, then I will inquire of that juror separately, outside  
22 the presence of all of them, and I'll do that in a separate  
23 room with a representative counsel from each side present, so  
24 that if those counsel have any questions they want to put to  
25 that juror, they'll have the chance to do that.

PROCEEDINGS

1 But I see no reason to go through 18 separate jurors  
2 without any indication at all, that they have been exposed to  
3 the material that we're concerned they should not have been  
4 exposed to.

5 You know, from day one, there's been extensive press  
6 coverage. We can't view the press coverage in a vacuum and  
7 while Mr. Lichtman was of the view that the issue about which  
8 we are concerned was the only issue covered over the weekend.  
9 that is not accurate. It was a dominant issue, I agree with  
10 that, but there's still no reason to think that a jury that has  
11 factitiously avoiding any coverage of the case, suddenly  
12 decided this weekend that they were going to disregard that  
13 daily forcefully-given instruction.

14 So I'm going to back there now and have a conversation  
15 with them, and I will let you know what my findings are after I  
16 have spoken to them.

17 All right. We'll still be in recess.

18 (Recess.)  
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SEALED CONFERENCE

1 (Sealed Jury Room Conference.)

2 THE COURT: [REDACTED]

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17 JUROR: [REDACTED]

18 THE COURT: [REDACTED]

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22 JUROR: [REDACTED]

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24 THE COURT: [REDACTED]

25 JUROR: [REDACTED]



SEALED CONFERENCE

1 THE COURT: [REDACTED]

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12 THE COURT: [REDACTED]

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16 (Continued on the next page.)

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PROCEEDINGS

1 (In open court, outside the presence of the jury.)

2 THE CLERK: All rise.

3 THE COURT: be seated.

4 I have thoroughly questioned the jury, as the lawyers  
5 will see from the transcript. I could not be more confident  
6 that they have been following my direction.

7 I looked at each of them. I gave multiple chances to  
8 answer the question. I asked open-ended questions. I assured  
9 them they weren't going to be in any trouble. I drew them out,  
10 really looking at each one on individual basis as much as I  
11 could.

12 And here's what I've got. One juror said, Judge, I  
13 did see something, but only that we're starting deliberations  
14 today. I said, are you sure that's it? She said absolutely,  
15 that's it. That's all I saw. Two jurors said that they had  
16 seen something quickly. They had seen a quick glance at  
17 something. I don't know what it was that they saw. I stopped  
18 them at that point.

19 And my proposal now is as to those two jurors, I go  
20 with one representative of each side, and we question those  
21 jurors as to what they saw and become satisfied that either  
22 they didn't see anything or if they did something, it's not  
23 going to affect their deliberations.

24 But I want to assure you, Mr. Lichtman, because I know  
25 you're rightfully concerned, this is a very cohesive jury.

PROCEEDINGS

1 They are paying attention to those instructions.

2 All right. So we will recess until the reporter can  
3 get set up.

4 No, Mr. Riley. This is definitely sealed, these  
5 proceedings for the reason that I stated earlier, it would  
6 affect deliberations.

7 Possibly, I should you have done this under seal, too,  
8 but I wanted to let the public know what is going on in general  
9 perimeters. The general is the best I can do here.

10 So we will reconvene in the robing room, one-on-one,  
11 two attorneys, one from each side, and separately, each of the  
12 two jurors who indicated they had seen something.

13 All right. We're in recess.

14 (Recess.)

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(Sealed Jury Room Conference.)

THE COURT:

MR. LICHTMAN:

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JUROR: [REDACTED]  
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THE COURT: [REDACTED]  
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JUROR: [REDACTED]  
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JUROR: [REDACTED]

THE COURT: [REDACTED]

MR. LICHTMAN: [REDACTED]

THE COURT: [REDACTED]

THE COURT:

MR. LICHTMAN: [REDACTED]

MS. PARLOVECCHIO: [REDACTED]

THE COURT: [REDACTED]

MS. PARLOVECCHIO: [REDACTED]

(Continued on the next page.)

JURY CHARGE

1 (In open court, outside the presence of the jury.)

2 THE COURT: Okay. Please bring in the jury.

3 (Jury enters.)

4 THE COURT: All right. Everyone be seated.

5 Good morning again, ladies and gentlemen.

6 Ladies and gentlemen, now that the evidence has been  
7 presented, it's my job to instruct you on the law. I'm going  
8 to give you a copy of these instructions in the jury room with  
9 you. So, you know, don't feel compelled to take notes,  
10 although you can if you want to.

11 The instruction I'm going to give you will be in three  
12 parts. First I'll instruct you on the general rules that  
13 define and govern the duties of a jury in a criminal case.  
14 Second, I'm going to instruct you as to the legal elements of  
15 the crimes charged in the indictment. Then, third, I'm going  
16 to give you some important principles to use during your  
17 deliberations.

18 Now the first two parts of these instructions are  
19 pretty long, and so we'll probably take a break probably at  
20 that end of the first part. Keep that in mind that, you know,  
21 it's not going to be straight through and you should get  
22 comfortable because it takes a little while to give you these  
23 instructions.

24 It's been very obvious to me, and I'm sure to the  
25 lawyers, that you have faithfully discharged your duty to



JURY CHARGE

1 listen carefully and observe each witness who testified during  
2 the trial. Please give me that same attention now as I give  
3 you these jury instructions.

4 It's my duty to instruct you on the law. You have to  
5 accept my instructions and apply them to the facts as you  
6 determine those facts. It would violate your sworn duty to  
7 base a verdict on any other view of the law other than the one  
8 that I'm about to give you. This means you have to follow my  
9 instructions, regardless of any opinion that you may have as to  
10 what the law is or what it should be and regardless of whether  
11 any attorney has stated a legal principal differently from the  
12 way I state it to you now. You also have to take these  
13 instructions as a whole during your deliberations. Don't  
14 single out any one particular instruction.

15 Now, as I told you when we started this case, I have  
16 no opinion on the verdict that you should reach. I have no dog  
17 in this fight. If you saw me make any kind of facial  
18 expression or ask a question or make a ruling that seemed to  
19 indicate that I have an opinion about the case one way or the  
20 other, you misread me; and you have to disregard it because I  
21 really do have no such opinion.

22 In addition, don't concern yourselves with the  
23 contents of any discussion that I had with counsel outside of  
24 your presence or at the sidebar. Again, you focus just on the  
25 evidence that was admitted here in court.

JURY CHARGE

1           You are going to be the sole and exclusive judges of  
2 the facts in this case. You could all be wearing black robes  
3 for the job that you're about to do. It's your duty to  
4 determine the weight of the evidence and the credibility of the  
5 witnesses, and you resolve any conflicts that there may be in  
6 the testimony. You draw whatever reasonable inferences you  
7 decide from the facts as you have determined them.

8           In carrying out that duty, remember that you took an  
9 oath to render judgment fairly and impartially, without  
10 prejudice or sympathy, and without any fear. You took an oath  
11 to base your verdict solely on the evidence in the case and the  
12 applicable law as I give it to you.

13           Please remember that all parties are here equally  
14 before you today. The fact that the Government is a party and  
15 a prosecution is brought in the name of the United States  
16 doesn't entitle the Government or its witnesses to any  
17 different consideration than the defendant.

18           You must not be swayed by sympathy for any of the  
19 parties or what the reaction of the parties or the public to  
20 your verdict may be. This means that if you have a reasonable  
21 doubt as to the defendant's guilt, you should not hesitate to  
22 acquit him; but if you find that the Government has met its  
23 burden of proving the defendant's guilt beyond a reasonable  
24 doubt, you should not hesitate because of sympathy or any other  
25 reason to find him guilty.

JURY CHARGE

1           You must not be influenced by any feelings you might  
2 have about the nature of the crimes charged or by any feelings  
3 you might have about the race, religion, national origin,  
4 gender, or age of the parties or anyone party participating in  
5 the trial.

6           Please don't bear any prejudice against any attorney  
7 or the attorneys' client because the attorney made an objection  
8 or asked for a sidebar outside of your hearing or asked me for  
9 a ruling on a point of law. If you formed opinions or  
10 reactions of any kind to the lawyers in this case, I instruct  
11 you to disregard them. The personalities and conduct of the  
12 counsel here, that's just not the issue in this case.

13           You also must not consider the question of the  
14 defendant's possible punishment. The duty of imposing a  
15 sentence if there is a conviction rests exclusively with me,  
16 and you can't allow that consideration to enter your  
17 deliberation at any point. You have to be guided solely by the  
18 evidence and the question of whether the Government has proven  
19 the defendant's guilt beyond a reasonable doubt.

20           Now the defendant has pled not guilty to the  
21 indictment; and as a result, the burden is on the Government to  
22 prove the defendant's guilt beyond a reasonable doubt. That  
23 burden never shifts to the defendant because the law does not  
24 impose on a criminal defendant any duty to call or  
25 cross-examine witnesses or produce any evidence at all.

JURY CHARGE

1 Because of this, because it's the Government's burden to prove  
2 the guilt of the defendant beyond a reasonable doubt, the  
3 defendant also has no obligation to testify during the trial.  
4 I remind you that a criminal defendant is never required to  
5 prove that he is innocent. So you must not attach any  
6 significance to the fact that the defendant didn't testify in  
7 this case nor may you draw any adverse inference against the  
8 defendant because he didn't take the witness stand. You may  
9 not consider that decision not to testify by the defendant  
10 against him in anyway at all.

11 You have heard of the presumption of innocence. The  
12 law presumes that the defendant is innocent of the charges  
13 against him. That presumption of innocence alone is sufficient  
14 to acquit the defendant. The presumption was with him when the  
15 trial began and it remains with him now and it will continue  
16 into your deliberations. I, therefore, instruct you that you  
17 must presume the defendant innocent throughout your  
18 deliberations unless and until you as a jury are satisfied that  
19 the Government has met its burden of proving the defendant  
20 guilty beyond a reasonable doubt.

21 So what is a reasonable doubt? The words almost  
22 define themselves. It is a doubt based on reason and common  
23 sense. It a doubt that a reasonable person has after carefully  
24 weighing all the evidence. It is a doubt that would cause a  
25 reasonable person to hesitate to act in a matter of importance

JURY CHARGE

1 in their own personal life. Proof beyond a reasonable doubt  
2 must be of such a convincing character that a reasonable person  
3 would not hesitate to rely on it in making an important  
4 decision. A reasonable doubt is not an impulse or a whim.  
5 It's not speculation or suspicion. It's not an excuse to avoid  
6 the performance of an unpleasant duty nor is it sympathy for  
7 any party.

8 Remember that the Government does not need to prove  
9 guilt beyond all possible doubt. Proof beyond a reasonable  
10 doubt is sufficient to convict. So if, after fair and  
11 impartial consideration of the evidence, you're satisfied  
12 beyond a reasonable doubt of the defendant's guilt with respect  
13 to a particular charge against him, then you should find the  
14 defendant guilty of that charge; but if, after your  
15 consideration of the evidence, you have a reasonable doubt as  
16 to the defendant's guilt with respect to a charge, you must  
17 find him not guilty of that charge.

18 Now the fact that one side called more witnesses and  
19 introduced more evidence than the other doesn't mean that you  
20 should necessarily find the facts in favor of the side offering  
21 the most witnesses. This is not a numbers game. By the same  
22 token, you don't have to accept the testimony from any witness  
23 who has not been contradicted or impeached if you find that the  
24 witness is not credible.

25 You also have to decide which witnesses to believe and

JURY CHARGE

1 which facts are true. To do this, you have to look at all of  
2 the evidence; and you draw upon your own common sense and  
3 personal experience. After examining all the evidence, you may  
4 decide that the party calling the most witnesses has not  
5 persuaded you because you do not believe its witness or because  
6 you do believe the fewer witnesses called by the other side.  
7 On the other hand, if you do find that the party calling the  
8 most witnesses was persuasive, you may decide in that party's  
9 favor.

10 Now in a minute I'm going to give you some guidance on  
11 how to evaluate evidence and witness credibility but for the  
12 moment I want to remind you that the burden of proof is always  
13 on the Government and the defendant is not required to call any  
14 witnesses or offer any evidence since he's presumed to be  
15 innocent.

16 Now, in determining the facts, it's going to be your  
17 own recollection of the evidence that controls. You should  
18 consider the evidence in light of your own common sense and  
19 experience, and you may draw reasonable inferences from the  
20 evidence. The evidence in this case consists of the sworn  
21 testimony of the witnesses, the exhibits received in evidence,  
22 and stipulations. Let me explain each of those to you in a  
23 little bit more detail.

24 A stipulation is an agreement between the two sides  
25 that a certain fact is true. You have to regard such agreed

JURY CHARGE

1 facts as true. A stipulation of testimony is an agreement  
2 among the parties that, if called, a witness would give certain  
3 testimony. You must accept as true the fact that the witness  
4 would have given that testimony, but it's still for you to  
5 determine the effect to be given to that testimony.

6 Now, you may consider only the exhibits which I have  
7 received into evidence. You may not consider exhibits which  
8 you might note the parties have said this is marked for  
9 identification but I did not say "received" or "admitted."  
10 That's not part of the trial record for your consideration.

11 Similarly, you have to disregard any testimony which I  
12 have ordered stricken. As I indicated before, only the  
13 witness's answers are evidence; and you are not to consider a  
14 question as evidence. You also have to remember that the  
15 lawyers' statements are not evidence and anything you may have  
16 seen or heard about the case outside of the courtroom, even  
17 though, as I confirmed this morning, you've all done your very  
18 best to stay away from anything like that, if you did run into  
19 something, if you got any exposure, that is not evidence and it  
20 has to be entirely disregarded.

21 Now, let me talk to you about direct and  
22 circumstantial evidence. You can consider both in deciding  
23 whether the Government has met its burden of proof. Direct  
24 evidence is evidence that proves a disputed fact directly such  
25 as when a witness testifies about what the witness saw, heard,

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1 or observed. Circumstantial evidence is evidence that tends to  
2 prove a fact, a disputed fact, by proof of other facts. The  
3 law doesn't say that one is better than the other. It doesn't  
4 make any distinction between direct and circumstantial  
5 evidence, and you may give either or both whatever weight you  
6 conclude is warranted.

7 Now, there's an example that we use in the courthouse  
8 to explain the difference between circumstantial and direct  
9 evidence. As you sit here today, you notice the window behind  
10 you is closed. We don't know what's going on outside. If  
11 somebody came in here into the courtroom and they were wearing  
12 a raincoat that was dripping wet and they were carrying an  
13 umbrella that was dripping wet, that would be circumstantial  
14 evidence that it's raining outside. You take one fact, the wet  
15 umbrella, the wet raincoat; and you use to it reach a  
16 conclusion about another fact. It's raining outside. By the  
17 same token, if everybody's coming in, they're not wearing  
18 coats, they're not carrying umbrellas, you can draw the  
19 inference that it's not raining outside. That would be the dry  
20 clothing would be circumstantial evidence that it's not  
21 raining. If on the other hand you were to go outside the  
22 courthouse and you see the rain coming down, you have direct  
23 evidence that it's raining outside.

24 That's all there is to the distinction between direct  
25 and circumstantial evidence. You infer on the basis of reason,



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1 experience, and common sense from an established fact or the  
2 lack of an established fact the existence or nonexistence of  
3 some other fact.

4 Now you've heard me use the word "inference" several  
5 times. An inference is not a suspicion or a guess. It's a  
6 reasoned, logical decision to conclude that a fact exists on  
7 the basis of another fact that you know exists. It's a  
8 deduction or conclusion that you're permitted but not required  
9 to draw from the facts that have been proven by direct or  
10 circumstantial evidence. Now the lawyers in this case have  
11 argued that you should or should not draw certain evidence of  
12 certain inferences based on the evidence presented during the  
13 trial. Remember that it's for you and you alone to decide what  
14 inference you're going to draw and not draw.

15 I want to remind you, however, that, whether based on  
16 direct or circumstantial evidence or upon the logical  
17 reasonable inferences that you draw from such evidence, you  
18 have to be satisfied that the Government has proved the  
19 defendant's guilt beyond a reasonable doubt before you may vote  
20 to convict.

21 Now the Government has presented evidence, some of  
22 these exhibits, in the form of charts and summaries. I  
23 admitted some of these charts and summaries in place of the  
24 underlying documents that they represent in order to save time  
25 and avoid unnecessary inconvenience. You should consider these

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1 charts and summaries as you would any other evidence.

2 Now, I just instructed you on what you may properly  
3 consider and infer as you're sifting through the evidence. Now  
4 I want to tell you what you can't consider as evidence. The  
5 objections that the lawyers made during trial, those are not  
6 evidence. Testimony and exhibits can only be admitted into  
7 evidence if they meet certain criteria or standards. So it's  
8 the lawyers' responsibility to object when they believe that  
9 the evidence is not admissible. You should not be influenced  
10 against the party because their lawyer made an objection.  
11 Similarly, do not attempt to interpret my rulings on objections  
12 as somehow indicating how I think you should decide the case.  
13 That's not what I'm doing at all. I'm simply ruling on a legal  
14 question regarding that particular testimony or exhibit.

15 Now as I'm sure you aware, many of the witnesses in  
16 this case testified in Spanish which was translated into  
17 English by a sworn interpreter. During jury selection I asked  
18 those of you who speak or understand Spanish whether you would  
19 be able to disregard any testimony or evidence that you saw or  
20 heard in Spanish and accept the English translation. You all  
21 told me that you'd be able to do that, but I'm instructing you  
22 again that you have to disregard any of the Spanish testimony  
23 and evidence and accept as the official record the English  
24 translation that was given by the interpreters.

25 That instruction also applies to the audio recordings

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1 that were entered into evidence. You have received transcripts  
2 of foreign language calls that are translations of these  
3 recordings. These transcripts are evidence, not just guides;  
4 and I instruct you to consider them just like any other  
5 evidence in the case.

6 Now you've also heard evidence in the form of audio  
7 recordings of conversations that were obtained without  
8 knowledge of some or all of the parties to those conversations.  
9 You've also seen and heard evidence obtained through  
10 court-authorized search and wiretap warrants. This evidence  
11 was obtained lawfully, and the Government has the right to use  
12 it in this case. Law enforcement techniques are not your  
13 concern. I deal with those before the trial ever starts. The  
14 evidence that you've heard is the evidence you're supposed to  
15 hear.

16 Please remember that the Government is not on trial,  
17 and I instruct you to disregard any arguments that may have  
18 been made to the contrary. There is no evidence that the  
19 Government operated under any kind of improper motive. You  
20 must base your decision only on the evidence or lack of  
21 evidence that has been presented at trial in determining  
22 whether the Government has met its burden of proving  
23 defendant's guilt beyond a reasonable doubt.

24 Now, the law does not require any party to present all  
25 available evidence or call as witnesses everyone who was

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1 present at any time or place or who might have knowledge of the  
2 matters at issue. The law also does not require any party to  
3 produce as exhibits all papers and objects mentioned during  
4 trial, but each party has an equal opportunity or lack of  
5 opportunity to call those witnesses or introduce that evidence.

6 I've already told you that the attorneys' questions,  
7 comments, statements, and arguments are not evidence. I'm also  
8 instructing you that whether either party has met its discovery  
9 obligation, the obligation to produce evidence to the other  
10 side, that's a question for me and not for you. You're not  
11 allowed to consider this during your deliberations. I have  
12 made no determination that either party has failed to meet its  
13 discovery obligations.

14 Your concern is to determine based on the evidence  
15 that has been presented whether the Government has met its  
16 burden to prove that the defendant is guilty beyond a  
17 reasonable doubt. You should not be concerned with whom or  
18 what the parties did not present during trial. That being  
19 said, you must always remember, as I mentioned before, that the  
20 law does not impose on a criminal defendant the burden or duty  
21 of calling any witnesses or producing any evidence.

22 Now, you may not draw any inference towards each party  
23 from the fact that other people who might have been involved in  
24 the offenses charged in the indictment are not on trial before  
25 you. You may not speculate as to the reason why or allow their

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1 absence as parties to influence your deliberations in any way.  
2 Your concern is solely the defendant on trial before you. The  
3 fact that these other individuals are not on trial before you  
4 is not your concern.

5           You're being asked to decide whether or not the  
6 Government has proven beyond a reasonable doubt the guilt of  
7 this defendant. You are not being asked whether any other  
8 person has been proven guilty. Your verdict should be based  
9 solely upon the evidence or lack of evidence as to this  
10 defendant in accordance with the instructions I'm giving you  
11 and without regard to whether the guilt of other people has or  
12 has not been proven. In that respect, I again remind you that  
13 the Government bears the burden of proving beyond a reasonable  
14 doubt that this defendant is guilty of the offenses charged in  
15 the indictment.

16           Now you've also heard evidence that the defendant  
17 engaged in certain criminal conduct that is not charged in the  
18 indictment. The defendant is not on trial for that conduct,  
19 and you may not consider evidence of those other acts as a  
20 substitute for proof that the defendant committed the crimes  
21 that are charged in this case. You may not consider evidence  
22 of those other acts as proof that the defendant has a criminal  
23 propensity which means that you can't conclude that the  
24 defendant likely committed the crimes charged in the  
25 indictment, because he had some predisposition to criminal

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1 conduct. That would be improper.

2           You may also consider uncharged conduct for a limited  
3 purpose as evidence, for example, (1) of the defendant's  
4 motive, knowledge, or intent in carrying out the charged crimes  
5 (2) of the development of relationships of mutual trust between  
6 the defendant and others with whom he is charged with carrying  
7 out the charged crimes (3) of conduct that is inextricably  
8 intertwined with evidence of the charged crimes (4) enabling  
9 you to understand the complete story of the charged crimes and  
10 (5) corroborating the testimony of other Government witnesses.  
11 Aside from those five purposes, you really cannot consider  
12 evidence of uncharged crimes at all.

13           Now let me talk to you for a minute about witness  
14 credibility. It's going to be your duty as jurors to determine  
15 the credibility of the witnesses and the importance of their  
16 testimony. You're going to have to decide where the truth  
17 lies, which will require you to judge the testimony that you  
18 listen to and observe. You need to carefully scrutinize the  
19 testimony, the circumstances under which each witness  
20 testifies, and any other matter in evidence that may help you  
21 decide the truth of and the weight to assign to their  
22 testimony.

23           Your decision whether to believe a witness may depend  
24 on how the witness impressed you. Was the witness candid and  
25 frank, or did the witness seem to be hiding something? Were

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1 they evasive or suspect in some way? How did the testimony on  
2 direct examination compare with the testimony on  
3 cross-examination? Was the witness's testimony consistent or  
4 inconsistent? Did it appear that the witness knew what the  
5 witness was talking about? Did the witness strike you as  
6 someone who was trying to report their knowledge accurately?

7           How much you choose to believe a witness may also be  
8 influenced by the witness's bias. Does the witness have a  
9 relationship with the Government or the defendant that may  
10 affect how the witness testified? Does the witness have some  
11 incentive, loyalty, or motive that might cause the witness to  
12 shade the truth? Or does the witness have some bias,  
13 prejudice, or hostility that may have caused the witness,  
14 whether consciously or not, to give you something other than a  
15 completely accurate account of the facts?

16           Evidence that a witness may be biased towards one of  
17 the parties requires you to view that witness's testimony with  
18 caution, to weigh it with great care, and to subject it to  
19 close scrutiny. In other words, what you have to do in  
20 deciding credibility is to size up a person just as you would  
21 in any important matter when you're trying to decide if a  
22 person is truthful, straightforward, and accurate in their  
23 recollection.

24           How much you're going to believe a witness may also be  
25 influenced by any interest that the witness may have in the

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1 outcome of the case. That interest may create a motive to  
2 testify falsely to advance that witness's own personal or  
3 professional interests. Now that's not to suggest that every  
4 witness who has an interest in the outcome of a case is going  
5 to testify falsely. I'm not saying that. I'm saying it's for  
6 you to decide to what extent, if at all, a witness's interest  
7 has affected or colored their testimony.

8           You should specifically consider evidence of  
9 resentment or anger that some Government witnesses made have  
10 towards the defendant. Evidence that a witness is biased,  
11 prejudiced, or hostile towards the defendant requires you to  
12 view that witness's testimony with caution, to weigh it with  
13 care, and subject to it close and searching scrutiny.

14           Even if you think that a witness wasn't biased, you  
15 should still consider whether the witness had an opportunity to  
16 observe the facts that the witness testified about, as well as  
17 the witness's demeanor and ability to communicate effectively.  
18 Ask yourself whether a witness's recollection of the facts  
19 stands up in light of the rest of the evidence. You need to be  
20 guided by your common sense, your good judgment, and your  
21 experience.

22           Now, you heard evidence of what counsel has argued are  
23 discrepancies between a witness's testimony and that of other  
24 witnesses. You've also heard evidence that a witness has made  
25 a statement on earlier occasions that counsel argues is



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1 inconsistent with the testimony that they gave you at trial,  
2 and counsel has urged you to reject some or all of that  
3 testimony based on these discrepancies or inconsistencies. If  
4 you find that the testimony did include discrepancies or  
5 inconsistencies, that may be a basis to disbelieve a witness's  
6 testimony; but discrepancies and inconsistencies do not  
7 necessarily require you to discredit a witness entirely. Two  
8 witnesses may see or hear something differently. An innocent  
9 misrecollection like failure of recollection is not uncommon.  
10 People sometimes forget things, and even truthful witnesses may  
11 be nervous and contradict themselves.

12 It's your job to determine the weight, if any, to  
13 assign to all or part of the testimony of a witness who has  
14 been impacted by discrepancies or prior inconsistent  
15 statements -- I'm sorry -- who has been impeached by  
16 discrepancies or prior inconsistent statements. You should  
17 also consider whether the discrepancy or inconsistency pertains  
18 to a matter of importance or unimportance and whether it  
19 results from an innocent error or whether it's an intentional  
20 falsehood.

21 It's for you to decide based on your total impression  
22 of each of the witnesses how to weigh the discrepancies or  
23 inconsistencies, if any, in their testimony. You should, as  
24 always, use common sense and your own good judgment.

25 Now, you heard witnesses testify as opinion witnesses,

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1 as experts about matters on which they had special knowledge,  
2 skill, experience, or training. I permitted those witnesses to  
3 express their opinions about matters that are at issue in this  
4 case because somebody who's experienced and knowledgeable in a  
5 particular field can assist you in understanding the evidence  
6 or in reaching an independent decision on a fact. So you  
7 should not substitute this opinion testimony for your own  
8 reason, judgment, and common sense.

9 In weighing the opinion testimony, you may consider  
10 the witness's qualifications, the witness's opinions, the  
11 reasons for testifying, as well as all the other considerations  
12 that ordinarily apply when you're deciding whether or not to  
13 believe a witness's testimony and what weight, if any, you find  
14 the testimony deserves. In other words, you should not accept  
15 opinion testimony just because I allowed the witness to give  
16 it. You have to evaluate that testimony like you would any  
17 other witness.

18 Now you've also heard testimony from law enforcement  
19 witnesses. The fact that a witness is a member of law  
20 enforcement does not mean that their testimony is entitled to  
21 any greater or any lesser weight. You should consider law  
22 enforcement testimony just like any other evidence in the case  
23 and evaluate the credibility of that witness just like you  
24 would any other witness.

25 Now, you also heard testimony that the Government's

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1 lawyers interviewed their witnesses from preparing for and  
2 during the trial. You should not draw any unfavorable  
3 inference from that testimony. The attorneys are obligated to  
4 prepare this case as thoroughly as possible; and one way to  
5 accomplish that is to properly interview witnesses before the  
6 trial and, if necessary, throughout the course of the trial.

7 Now you have also heard testimony from Government  
8 witnesses who pled guilty to charges arising out of the same or  
9 related facts to this case. You're instructed that you are to  
10 draw no conclusions or inferences of any kind about this  
11 defendant's guilt from the fact that any of the prosecution  
12 witnesses themselves pled guilty to similar charges. Those  
13 witnesses' decisions to plead guilty were personal decisions  
14 about their own guilt. You may not use it in any way as  
15 evidence against this defendant.

16 You have also heard witnesses who testified that they  
17 were involved in planning and carrying out certain crimes with  
18 the defendant and others. The lawyers have said a great deal  
19 about these cooperating witnesses in their closing arguments  
20 and about whether you should believe them. Experience will  
21 tell you that the Government sometimes must rely on the  
22 testimony of witnesses who admit participating in the alleged  
23 crimes at issue. Otherwise, it would be difficult or  
24 impossible to detect and prosecute wrongdoers. The Government  
25 argues, as it is permitted to do, that it must take the

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1 witnesses as it finds them and that people who themselves take  
2 part in criminal activity have the knowledge required to show  
3 criminal behavior by others.

4           The law allows the use of cooperating witness  
5 testimony. Indeed the testimony of cooperating witnesses may  
6 be enough in itself for a conviction if the jury finds that the  
7 testimony establishes guilt beyond a reasonable doubt.

8 Cooperating witness testimony has to be scrutinized with great  
9 care and viewed with particular caution when you decide how  
10 much of that testimony to believe. You may consider the fact  
11 that a witness is cooperating with the Government as bearing on  
12 that witness's credibility; and you should give the witness's  
13 testimony the weight you feel it deserves, in light of all of  
14 the facts and circumstances before you. You may also consider  
15 whether a cooperating witness had an interest in the outcome of  
16 the crime and, if so, whether that interest has affected their  
17 testimony.

18           You should ask yourselves whether these witnesses  
19 would benefit more by lying or by telling the truth. Was their  
20 testimony made up in some way because they believed or hoped  
21 that they would somehow receive favorable treatment by  
22 testifying falsely, or did they believe that their interest  
23 would be best served by testifying truthfully? If you believe  
24 that the witness was motivated by hopes of personal gain, was  
25 the motivation one that would cause the witness to lie; or was

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1 it one that would cause the witness to tell the truth? Did  
2 this motivation color that testimony?

3 You've already heard testimony that these cooperating  
4 witnesses pled guilty after entering into an agreement with the  
5 Government to testify. There's also evidence that the  
6 Government agreed to dismiss some charges against those  
7 witnesses or agreed not to prosecute them on other charges in  
8 exchange for the witness's agreement to plead guilty and  
9 testify against the defendants or otherwise agreed to testify.

10 The Government has also promised to bring the  
11 witness's cooperation to the attention of the sentencing  
12 courts. The Government is allowed to enter into these  
13 agreements, and it is not your concern why the Government made  
14 an agreement with a particular witness or whether you approve  
15 or disapprove of the Government's tactics. You may, however,  
16 consider the effect, if any, that the existence or terms of the  
17 agreement may have on the witness's credibility.

18 Therefore, you must examine their testimony with  
19 caution and weigh it with great care. If, after scrutinizing  
20 their testimony, you decide to accept it, you may give it  
21 whatever weight, if any, you think that it deserves.  
22 Ultimately, if you think that a cooperating witness's testimony  
23 was false, you should reject it; but if, after a cautious and  
24 careful examination of the witness's testimony, you're  
25 satisfied that the cooperating witness told the truth, you

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1 should accept it as credible and act upon it accordingly.

2 As with any witness, let my emphasize that the issue  
3 of credibility need not be decided in an all-or-nothing  
4 fashion. Even if you find that a witness testified falsely in  
5 one part, you may still accept that witness's testimony in  
6 other parts; or you may disregard it all. That determination  
7 is entirely up to you.

8 Now during the trial I gave a brief instruction on how  
9 cooperating witnesses get sentenced when it comes to the time  
10 of their sentencing, and I want to repeat that for you. When  
11 someone cooperates with the Government, the Government does not  
12 determine what sentence they are going to get nor does the  
13 Government typically make a recommendation to the sentencing  
14 judge as to how much time the Government thinks they should  
15 get; but what the Government will do, if it is satisfied with  
16 the witness's cooperation, is to write to the sentencing judge  
17 what is known as a 5K1 letter. That letter sets forth the  
18 nature of the crimes that the cooperating witness has committed  
19 and all of the cooperation that the witness has undertaken.

20 The judge then takes that letter, together with a lot  
21 of other information about the cooperating witness and all of  
22 the crimes that the cooperating witness has committed, and it  
23 is the judge exclusively who decides the appropriate sentence,  
24 not the Government.

25 All that a cooperating witness gets from the

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1 Government, if the Government is satisfied with their  
2 cooperation, is this 5K1 letter; but the letter is also  
3 significant because, if a cooperating witness receives one, the  
4 judge is permitted by the law to sentence that witness below  
5 any mandatory minimum sentence that the law would otherwise  
6 require.

7 It's the Government's decision as to whether to submit  
8 the letter and the Government's decision alone, but it is the  
9 judge's decision alone as to what the sentence should be.

10 Similarly, you may have heard testimony about what the  
11 lawyers referred to as a Rule 35 sentencing reduction. In  
12 certain circumstances Rule 35 operates similarly to Rule 5K1  
13 except that Rule 35 applies to a cooperator who had already  
14 been sentenced and then gives cooperation after he has  
15 sentenced, whereas 5K1 applies to a cooperator who has not yet  
16 been sentenced. Otherwise they're quite similar.

17 All right. That concludes Part One.

18 Part Two is probably about 45 minutes. Do you want to  
19 break now? Do you want to keep going?

20 JUROR: (Nods head up and down.)

21 THE COURT: I'm getting one nod to go, getting no head  
22 shakes to stop. We will continue. Okay.

23 I'm now going to give you the second part of my  
24 instructions will involve the legal elements of the crimes  
25 charged in the case.

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1           The defendant is charged in an indictment which is  
2 just a formal accusation by the Government. The indictment is  
3 not evidence of any kind, and it's entitled to no weight in  
4 your determination of the facts. In this case the indictment  
5 has ten counts or separate offenses. I'm going to go over them  
6 in detail, but let me summarize them now. I'm just going to  
7 run through them.

8           Count One charges the defendant with engaging in a  
9 continuing criminal enterprise, what we call a CCE.

10          Count Two charges the defendant with international  
11 cocaine, heroin, methamphetamine, and marijuana manufacturing  
12 and distribution conspiracy.

13          Count Three charges the defendant with cocaine  
14 importation conspiracy.

15          Count Four charges the defendant with cocaine  
16 distribution conspiracy.

17          Count Fives, Six, Seven and Eight charge the defendant  
18 with international cocaine distribution.

19          Count Nine charges the defendant with the use of a  
20 firearm during a drug trafficking crime.

21          And Count Ten charges the defendant with money  
22 laundering conspiracy.

23          Now, you have to consider each count separately; and  
24 you have to return a verdict based only on the evidence as it  
25 relates to that specific count. Whether you find the defendant



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1 not guilty or guilty as to one count should not affect your  
2 verdict as to any other count. You've got to go through all  
3 ten.

4 There are two other points I want to make about the  
5 indictment. First, you'll see that when the indictment alleges  
6 dates, something happened on a date, it frequently uses the  
7 term "in or about," "on or about," or "between certain dates."  
8 The proof, the evidence before you need not establish with  
9 certainty the exact date of an alleged offense. It is  
10 sufficient if the evidence establishes beyond a reasonable  
11 doubt that an offense was committed on a date reasonably near  
12 the date alleged.

13 You also see that the indictment uses the word "and";  
14 and sometimes in my instruction, when I'm describing the  
15 indictment, I'll use the word "or." That's just the result of  
16 how the Government formally states its charges. It's not a  
17 statement of the law. When I use the word "or" in these  
18 instructions, that "or" is controlling over any other  
19 contradictory phrase that may appear in the indictment.

20 Now let me next instruct you on the legal concepts of  
21 knowledge and intent which are implicated by each count in the  
22 indictment. A person knowing acts knowingly when he acts  
23 intentionally and voluntarily and not because of ignorance,  
24 mistake, accident, or carelessness.

25 Whether a defendant acted knowingly may be proven by

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1 his conduct and by all the facts and circumstances surrounding  
2 the case. A person acts intentionally when he acts  
3 deliberately and purposefully. The defendant's acts must have  
4 been the product of his conscious objective, rather than the  
5 product of a mistake or accident.

6 Now I want to talk to you about the concept of aiding  
7 and abetting. In some of these counts the defendant is charged  
8 with being a principal who committed the alleged crime or,  
9 alternatively, with aiding and abetting other people to commit  
10 that crime.

11 With respect to the aiding and abetting charges, the  
12 Government does not need to show that the defendant himself  
13 physically committed the crime, because a person who aids and  
14 abets another to commit an offense is just as guilty of that  
15 offense as if he had committed it himself. You may find the  
16 defendant guilty of the offense charged only if you find beyond  
17 a reasonable doubt that the Government has proven that another  
18 person committed the offense and that the defendant aided or  
19 abetted that person in the commission of the offense.

20 Before you can convict the defendant on the ground  
21 that he aided and abetted the commission of a crime, you have  
22 to first find that another person committed that crime. Nobody  
23 can be convicted of aiding and abetting the criminal act of  
24 another if no crime was committed by the other person in the  
25 first place; but if you do find that a crime was committed,

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1 then you have to determine whether the defendant aided or  
2 abetted the commission of that crime.

3 To aid or abet somebody else to commit a crime, the  
4 defendant has to do two things. First, he must knowingly  
5 associate himself in some way with the crime; and, second, he  
6 must participate in the crime by doing some act, something that  
7 helped the crime succeed. To establish that the defendant  
8 knowingly associated himself with the crime, the Government  
9 must establish that the defendant acted knowingly and  
10 intentionally. I just told you what "knowing and  
11 intentionally" means. You'll apply those instructions here.

12 To establish that the defendant participated in the  
13 commission of a crime, the Government has to prove that the  
14 defendant engaged in some affirmative conduct, or what we call  
15 an overt act, for the specific purpose of bringing about the  
16 crime. The defendant's mere presence when a crime is being  
17 committed, even coupled with the defendant's knowledge that a  
18 crime is being committed, is not sufficient to establish aiding  
19 and abetting. Neither is merely associating with others who  
20 were committing a crime or inadvertent doing something that  
21 aids in the commission of a crime without any knowledge that a  
22 crime is being committed or about to be committed.

23 An aider and abettor must know that the crime is being  
24 committed and must act in a way that is intended to bring about  
25 the success of the criminal venture.

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1           To determine whether the defendant aided or abetted  
2 the commission of the crime with which he's charged, ask  
3 yourself these questions: Did he participate in the crime  
4 charged as something he wished to bring about? Did he  
5 knowingly associate himself with the criminal venture? And did  
6 he seek by his actions to make the criminal venture succeed?  
7 If he did, then the defendant is an aider and abettor and,  
8 therefore, guilty of the offense but, if your answer to any of  
9 those three questions is "no," then the defendant is not an  
10 aider and abettor and you must find him not guilty.

11           Now, several counts in the indictment involve  
12 conspiracy charges. So I'm going to talk to you about the law  
13 of conspiracy in general, as soon as I have something, a little  
14 bit of water. Hang on.

15           (Brief pause.)

16           THE COURT: Okay. What's a conspiracy? A conspiracy  
17 is an agreement by two or more persons to accomplish some  
18 unlawful objective, and sometimes we call it a criminal  
19 partnership. The crime of conspiracy is separate from the  
20 crime the alleged conspirators agreed to commit. The crime  
21 they agreed to commit, the law refers to that as the  
22 substantive crime. The conspiracy is the agreement itself,  
23 whether or not the substantive crime is accomplished.

24           A conspiracy is in and of itself a crime, even if it  
25 fails to achieve its unlawful purpose; and you may find the

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1 defendant guilty of the crime of conspiracy, even though the  
2 substantive crime that was the object of the conspiracy was not  
3 actually committed.

4 Congress has deemed it appropriate to make a  
5 conspiracy standing alone a separate crime, even if the  
6 conspiracy did not succeed. That's because collective criminal  
7 activity, criminal agreements, pose a greater threat to the  
8 public safety and welfare than individual conduct and increases  
9 the likelihood of success of a particular criminal venture.

10 Now, in order for the defendant to be guilty of a  
11 conspiracy to violate Federal law, the Government has to prove  
12 two elements beyond a reasonable doubt:

13 First, that two or more persons entering into the  
14 particular unlawful agreement charged in the indictment; and

15 Second, that the defendant knowingly and intentionally  
16 became a member of that conspiracy.

17 As to the first element, the existence of a charged  
18 conspiracy, the Government must prove that two or more people  
19 entered into the unlawful agreement that is charged in the  
20 particular count that you are considering. One person cannot  
21 commit the crime of conspiracy alone because it's an agreement.  
22 The proof must convince you that at least two people joined  
23 together in a common criminal scheme, but the Government  
24 doesn't need to prove an express or a formal agreement or that  
25 the conspirators stated in words or in writing what the scheme

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1 was, its object or purpose, or even how it was to be  
2 accomplished. It's sufficient if the proof establishes that  
3 the conspirators came to an unspoken mutual understanding to  
4 accomplish an unlawful act by means of a joint plan or common  
5 design.

6 You may find that the existence of an agreement  
7 between two or more persons to disobey or disregard the law has  
8 been established by direct proof, but this conspiracy is often  
9 by its nature characterized by its secrecy. You may also infer  
10 its existence from the circumstances of the case and the  
11 conduct of the parties involved. In this context actions often  
12 speak louder than words. So, in determining whether an  
13 agreement existed, you may consider the actions and statements  
14 of all of those you find to be participants as proof that a  
15 common design existed on the part of the persons charged to act  
16 together to accomplish an unlawful purpose.

17 If you are satisfied that the conspiracy existed, the  
18 second element that the Government has to prove beyond a  
19 reasonable doubt is that the defendant knowingly and  
20 intentionally became a member of the charged conspiracy.  
21 You'll recall I already instructed you on what "knowingly and  
22 intentionally" means, and those instructions apply here.

23 Essentially the defendant must have participated in  
24 the conspiracy with knowledge of its unlawful purpose and with  
25 the specific intention of furthering one or more of its

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1 objectives. This must be established by independent evidence  
2 of the defendant's own acts or statements, as well as those of  
3 other alleged co-conspirator and the reasonable inferences  
4 which may be drawn from that evidence.

5 Proof of a financial interest in the outcome of a  
6 scheme is not essential for a finding of conspiracy; but if you  
7 find that the defendant has such an interest, that's a factor  
8 you may properly consider in determining whether or not the  
9 defendant was a member of the charged conspiracy.

10 The defendant also need not have known the identities  
11 of each member of the conspiracy or all of their activities.  
12 He need not have been fully informed of all of the details or  
13 the scope of the conspiracy or joined all of conspiracy's  
14 unlawful objectives nor is a conspirator's liability measured  
15 by the extent or duration of his participation in the  
16 conspiracy. In other words, to be guilty of conspiring to  
17 commit a crime, the defendant need not have been a member of  
18 any conspiracy from its very start. Each member may perform  
19 separate and distinct acts and may perform them at different  
20 times. Some conspirators may play major roles while others may  
21 play minor ones. Even a single act may be sufficient to draw a  
22 defendant within the circle of a conspiracy.

23 Keep in mind, though, that the defendant's mere  
24 presence at the scene of an alleged crime does not by itself  
25 make him a member of the conspiracy. Association with one or

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1 more members of a conspiracy does not automatically make the  
2 defendant a member. A person may know or be friendly with a  
3 criminal without being a criminal himself and similarity of  
4 conductor or the fact that persons may have assembled together  
5 and discussed common aims and interests does not necessarily  
6 establish proof of the existence of a conspiracy.

7 In addition, mere knowledge or acquiescence without  
8 participation in the unlawful plan is not sufficient. The fact  
9 that the defendant's acts merely happened to further purposes  
10 or objectives of the conspiracy does not make the defendant a  
11 member. The defendant must have participated with knowledge of  
12 at least some of the purposes or objectives of the conspiracy  
13 and with the intention of aiding in the accomplishment of those  
14 unlawful ends.

15 Ultimately, the Government has to prove beyond a  
16 reasonable doubt that the defendant was a member of the  
17 conspiracy charged. If you find that the defendant was not a  
18 member of the charged conspiracy, you can't find him guilty of  
19 that count, even if you find that he was a member of some other  
20 conspiracy. Proof that the defendant was a member of some  
21 other conspiracy is not enough to convict on the charged  
22 conspiracy. On the other hand, even if you find that multiple  
23 conspiracies existed, you should convict the defendant if you  
24 find beyond a reasonable doubt that one of the conspiracies was  
25 the one alleged in the indictment and that the defendant was a



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1 member of it.

2 In sum, the defendant, with an understanding of the  
3 unlawful character of the conspiracy, must have intentionally  
4 engaged, advised, or assisted in it for the purpose of  
5 furthering the illegal undertaking. He, therefore, becomes a  
6 knowing and intentional participant in the unlawful agreement.  
7 That is to say, he becomes a conspirator.

8 Now, I just want to talk to you about the venue of the  
9 case which means the particular location that the defendant is  
10 indicted and tried.

11 As you heard throughout the trial, many of the acts  
12 alleged to have taken place occurred outside the United States.  
13 Nevertheless, American law provides the defendant may be  
14 prosecuted here in the Eastern District of New York if you find  
15 by a preponderance of the evidence that the defendant was first  
16 brought into the United States in connection with these charges  
17 within the Eastern District of New York. It doesn't matter if  
18 the defendant was brought to the United States involuntarily or  
19 in the custody of law enforcement officers. I instruct you  
20 that the Eastern District of New York encompasses the boroughs  
21 of Brooklyn, Queens, Staten Island, as well as Nassau and  
22 Suffolk counties on Long Island.

23 Now you notice I use a different standard of proof  
24 here. I said the Government has to prove that he was brought  
25 here by a preponderance of the evidence. To prove something by

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1 a preponderance of the evidence means to prove that it is more  
2 likely true than not true. It's determined by considering all  
3 of the evidence and deciding which evidence is more convincing.  
4 If the evidence appears to be equally balanced or if you can't  
5 say which side weighs heavier, then you have to resolve the  
6 question against the Government.

7 Now, proof by a preponderance of the evidence is a  
8 lower standard than proof beyond a reasonable doubt. There's a  
9 venue issue. Was he brought here involuntarily? That's the  
10 only time in the case that you may use the preponderance of the  
11 evidence standard to find that a legal element has been  
12 satisfied. Everything else is beyond a reasonable doubt.

13 All right. I'm going to start going through the  
14 specific counts in the indictment with you. For now I'm going  
15 to skip over Count One because the law involving Count One is  
16 somewhat duplicative of other counts in the indictment; and if  
17 I cover those counts, I'll have given you a good part of Count  
18 One already.

19 So let's start with Count Two. Count Two is a  
20 conspiracy charge. It charges a conspiracy to manufacture and  
21 distribute internationally cocaine, heroin, methamphetamine,  
22 and marijuana. It reads in relevant part -- and this is mostly  
23 from the indictment:

24 In or about and between January, 1989, and September,  
25 2014, the defendant, together with others, did knowingly and

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1 intentionally conspire to manufacture and distribute one or  
2 more controlled substances which offense involved (A) a  
3 substance containing cocaine, a Schedule II controlled  
4 substance (B) a substance containing heroin, a Schedule I  
5 controlled substance; (C) a substance containing  
6 methamphetamine, a Schedule II controlled substance; and (D) a  
7 substance containing marijuana, a Schedule I control substance,  
8 intending and knowing that such substances would be unlawfully  
9 imported into the United States from a place outside thereof.

10           The amount of cocaine involved in the conspiracy  
11 attributable to the defendant as a result of his own conduct  
12 and the conduct of other conspirators reasonably foreseeable to  
13 him was at least 5 kilograms or more of a substance containing  
14 cocaine. The amount of heroin involved in the conspiracy  
15 attributable to the defendant as a result of his own conduct,  
16 and the conduct of other conspirators reasonably related to  
17 him, was at least 1 kilogram or more of a substance containing  
18 heroin. The amount of methamphetamine involved in the  
19 conspiracy attributable to the defendant as a result of his own  
20 conduct, and the conduct of other conspirators reasonably  
21 foreseeable to him, was at least 500 grams or more of a mixture  
22 or substance containing methamphetamine. The amount of  
23 marijuana involved in the conspiracy attributable to the  
24 defendant as a result of his own conduct, and the conduct of  
25 other conspirators reasonably foreseeable to him, was at least

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1 1,000 kilograms of a substance containing marijuana.

2 That's how indictments read, a lot of legal language.

3 Let me tell you now what it means.

4 I have already instruction you on the law of  
5 conspiracy. That's what this is, a conspiracy charge. So  
6 please apply those instructions here.

7 Before you can convict the defendant of the  
8 international cocaine, heroin, methamphetamine, and marijuana  
9 manufacture and distribution conspiracy charged in this Count  
10 Two, the Government has to prove beyond a reasonable doubt each  
11 of the following elements of the offense:

12 First, that two or more individuals entered into an  
13 agreement to manufacture or distribute cocaine, heroin,  
14 methamphetamine, or marijuana with knowledge that the substance  
15 would be unlawfully imported into the United States; and

16 Second, that the defendant knowingly and intentionally  
17 became a member of that conspiracy.

18 Please apply the instructions I gave you on those  
19 terms here.

20 With respect to the first element, the agreement to  
21 commit an unlawful act, the underlying crime of manufacturing  
22 or distributing cocaine, heroin, methamphetamine, or marijuana  
23 for the purpose of unlawful importation has several elements.  
24 I remind you that the defendant is not charged in Count Two  
25 with actually committing the unlawful act of manufacturing or

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1 distributing but, rather, with conspiring, conspiracy to commit  
2 them. I will describe for you the elements of these unlawful  
3 acts so that you can understand what the Government must prove  
4 was an object, an objective of the conspiracy charged in Count  
5 Two.

6 First, that the defendant intentionally manufactured  
7 or distributed narcotic drugs;

8 Second, that the defendant knew that the substance  
9 being manufactured or distributed was a narcotic; and

10 Third, that the defendant knew that the substance  
11 manufactured or distributed was to be illegally imported into  
12 the United States.

13 To establish the first element, the Government must  
14 prove beyond a reasonable doubt that the material manufactured  
15 or distributed was, in fact, cocaine, heroin, methamphetamine,  
16 or marijuana. The Government may prove this either through  
17 direct or circumstantial evidence.

18 An example of direct evidence would be the testimony  
19 of a chemist who's done a chemical analysis of the material.  
20 Circumstantial evidence would be evidence from which you could  
21 infer that the material was cocaine, heroin, methamphetamine,  
22 or marijuana such as testimony concerning the names used by the  
23 defendant to refer to the material or testimony about the  
24 material's appearance.

25 Whether the Government relies on direct or

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1 circumstantial evidence to prove that the material in issue was  
2 one of these drugs, it has to prove that beyond a reasonable  
3 doubt. To establish the first element, the Government must  
4 also prove beyond a reasonable doubt that the defendant  
5 intentionally manufactured or distributed the cocaine, heroin,  
6 methamphetamine, or marijuana. Please consider my definition  
7 of the term "intentionally" here.

8 I also instruct you that the word "manufacture" has  
9 its plain and ordinary meaning and that the word "distribute"  
10 means to deliver a narcotic. Deliver is defined as the actual  
11 constructive or attempted transfer of a narcotic.

12 Simply stated, the words "distribute" and "deliver"  
13 mean to pass on or to hand over to another or to cause to be  
14 passed on or handed to another or to try to pass on or hand  
15 over to another narcotics. For example, if "A" tells or orders  
16 "B" to hand over the drugs to "C," then "A" has caused the  
17 drugs to be handed over and, therefore, has distributed them.

18 Distribution does not require a sale. Activities in  
19 furtherance of the ultimate sale such as vouching for the  
20 quality of the drugs, negotiating for or receiving the price,  
21 and supplying or delivering the drugs may constitute  
22 distribution. In short, distribution requires a concrete  
23 involvement in the transfer of the drugs.

24 To establish the second element, the Government has to  
25 prove that the defendant knew that it was narcotics being

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1 manufactured or distributed and that this was not due to  
2 carelessness, negligence, or mistake. Although the Government  
3 must prove that the defendant knew that he was manufacturing or  
4 distributing narcotics, the Government does not have to prove  
5 that the defendant knew the exact nature of the drugs involved.  
6 It's enough that the Government proves that the defendant knew  
7 that it was some kind of narcotic.

8 To establish the third element, the Government has to  
9 prove that the defendant knew that the drugs were intended to  
10 enter the United States from outside the United States and that  
11 this didn't occur by accident or mistake. Therefore, to  
12 summarize, if you find that the defendant entered into an  
13 agreement to manufacture or distribute cocaine, heroin,  
14 methamphetamine, or marijuana with the knowledge that the  
15 substance would be imported into the United States and that he  
16 entered into that agreement knowingly and intentionally, then  
17 you must find the defendant guilty of the crime charged in  
18 Count Two. If, however, you find that the Government did not  
19 prove each element of the conspiracy beyond a reasonable doubt,  
20 then you must reach a verdict of not guilty.

21 Your decision as to whether the defendant conspired to  
22 commit this particular unlawful act of conspiracy must be  
23 unanimous like every other charge you have to find on. I'll  
24 tell you more later. Your findings have to be unanimous.

25 If you determine that the defendant is guilty beyond a

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1 reasonable doubt of the crime charged in Count Two, you must  
2 determine whether the Government has established beyond a  
3 reasonable doubt that the conspiracy involved at least 5  
4 kilograms or more of cocaine or at least 1 kilogram or more of  
5 heroin or at least 500 grams of methamphetamine or at least  
6 1,000 kilograms of marijuana that is attributable to the  
7 defendant as a result of his own conduct or the conduct of  
8 other conspirators that he should have been able to foresee.

9           You'll see those questions on the verdict sheet that  
10 I'm going to give you.

11           Let me move then to Count Three. Count Three is  
12 another conspiracy charge, cocaine importation, conspiracy to  
13 import cocaine. It reads in relevant part:

14           In or about and between January, 1989, and September,  
15 2014, the defendant, together with others, did knowingly and  
16 intentionally conspire to import a controlled substance into  
17 the United States from a place outside thereof, which offense  
18 involved a substance containing cocaine, a Schedule II  
19 controlled substance.

20           The amount of cocaine involved in the conspiracy  
21 attributable to the defendant as a result of his own conduct  
22 and the conduct of other conspirators reasonably foreseeable to  
23 him was at least 5 kilograms or more of a substance containing  
24 cocaine.

25           Now I've already instructed you on the law of



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1 conspiracy. So please apply those instructions here.

2 Before you may convict the defendant of the cocaine  
3 importation conspiracy charged in Count Three, the Government  
4 must establish beyond a reasonable doubt each of the following  
5 elements of the offense:

6 First, that two or more persons entered into an  
7 agreement to import cocaine into the United States from  
8 someplace outside the United States; and

9 Second, that the defendant knowingly and intentionally  
10 became a member of that conspiracy.

11 Please apply the prior instruction that I gave you on  
12 those terms here.

13 With respect to the first element, the agreement to  
14 commit an unlawful act, the underlying crime of unlawful  
15 importation of cocaine has several elements. I want to remind  
16 you that the defendant is not charged in Count Three with  
17 actually committing the unlawful act of importing cocaine but,  
18 rather, with conspiring to commit it.

19 I'm going to describe to you the elements of this  
20 unlawful act anyway so that you can understand what the  
21 Government must prove was an objective of the conspiracy  
22 charged in Count Three:

23 First, that the defendant intentionally brought or  
24 played a part in bringing narcotic drugs into the United States  
25 from someplace outside the United States;

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1 Second, that the defendant knew that the substance  
2 being imported was a narcotic drug; and

3 Third, that the defendant knew that he was importing  
4 narcotic drugs into the United States.

5 To establish the first element, the Government must  
6 prove two things beyond a reasonable doubt:

7 First, that the narcotics were brought into the United  
8 States from someplace outside the United States; and

9 Second, that the material the defendant is charged  
10 with bringing into the United States is, in fact, cocaine.

11 As I instructed you on Count Two, the Government may  
12 prove this through direct or circumstantial evidence. So  
13 please apply that same instruction here.

14 To establish the second element, the Government has to  
15 prove that the defendant knew that it was narcotics he was  
16 bringing into the United States and that this wasn't due to  
17 carelessness, negligence, or mistake. The same as Count Two,  
18 the Government doesn't have to prove that the defendant knew  
19 the exact nature of the drugs involved. All the Government has  
20 to prove beyond a reasonable doubt is that the defendant knew  
21 it was some kind of narcotic.

22 To establish this third element, the Government must  
23 prove that the defendant knew that drugs would enter the United  
24 States from outside the United States and that this did not  
25 occur by accident or mistake.

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1           So, to summarize, if you find that defendant entered  
2 into an agreement to unlawfully import cocaine and that he  
3 entered into that agreement knowingly and intentionally, then  
4 you must find the defendant guilty of the crime charged in  
5 Count Three. If, however, you find that the Government did not  
6 prove each element of the conspiracy beyond a reasonable doubt,  
7 then you have to reach a verdict of not guilty. Again, your  
8 decision as to whether the defendant conspired to import  
9 cocaine into the United States has to be unanimous.

10           If you determine that the defendant is guilty beyond a  
11 reasonable doubt of the crime charged in Count Three, you must  
12 also determine whether -- you have a quantity requirement you  
13 have to find. You have to find whether the Government has  
14 established beyond a reasonable doubt that the conspiracy  
15 involved at least 5 kilograms or more of a substance containing  
16 cocaine that is attributable to the defendant as a result of  
17 his own conduct or the conduct of other conspirators that was  
18 reasonably foreseeable to him. Those questions will also be on  
19 the verdict sheet.

20           How are you feeling now? Everyone still strong?  
21 Still going? Okay.

22           Count Four. This is charged as another conspiracy, a  
23 cocaine distribution conspiracy. It reads in relevant part:

24           In or about and between January, 1989, and September,  
25 2014, the defendant, together with others, did knowingly and

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1 intentionally conspire to distribute and possess with intent to  
2 distribute a controlled substance, which offense involved a  
3 substance containing cocaine, a Schedule II controlled  
4 substance. The amount of cocaine involved in the conspiracy  
5 attributable to the defendant as a result of his own conduct  
6 and the conduct of other conspirators reasonably foreseeable to  
7 him was at least 5 kilograms or more of a substance containing  
8 cocaine.

9           Again, I have already instructed you on the law of  
10 conspiracy. So you know how to apply those instructions here.  
11 If you're going to convict him on Count Four, the Government  
12 has to establish the following two elements beyond a reasonable  
13 doubt:

14           First, that two or more persons entered an agreement  
15 to distribute or possess with intent to distribute cocaine  
16 within the Eastern District of New York and elsewhere; and

17           Second, that the defendant knowingly and intentionally  
18 became a member of that conspiracy.

19           Please refer to my prior instructions on these two  
20 elements.

21           With respect to the first element, the agreement to  
22 commit an unlawful act, the underlying unlawful act of  
23 distribution or possession with the intent to distribute  
24 cocaine has several elements. Now, I again remind you that  
25 he's not charged in this Count Four with actually committing

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1 these unlawful acts but rather with conspiring to produce them.  
2 Nevertheless, I'm going to describe for you the elements of  
3 those unlawful acts so you can understand what the Government  
4 must prove was an objective of the conspiracy.

5 The crime of possession with the intent to distribute  
6 consists of the following elements:

7 First, that the defendant possessed narcotic drugs;

8 Second, that the defendant knew he possessed narcotic  
9 drugs; and

10 Third, that the defendant possessed the narcotic drugs  
11 with the intent to distribute them.

12 To establish this first element, the Government would  
13 have to prove beyond a reasonable doubt that the material the  
14 defendant is charged with possessing was, in fact, cocaine. As  
15 was the case with Counts Two and Three, the Government must  
16 prove this through direct or circumstantial evidence. So  
17 please apply that same instruction here.

18 To establish the first element, the Government must  
19 also prove beyond a reasonable doubt that the defendant  
20 possessed the cocaine. In order to possess a substance, a  
21 person need not own it. The person may be possessing it for  
22 somebody else. The word "possession" as it is used in the law  
23 encompasses two kinds of possession: Actual possession and  
24 constructive possession. A person who knowingly has direct,  
25 physical control over a thing at a given time is then in actual

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1 possession of it. A person who, although not in actual  
2 possession, knowingly has both the power and the intention at a  
3 given time to exercise dominion or control over a thing either  
4 directly or through another person or persons is in  
5 constructive possession of it.

6 With respect to the second element, the Government  
7 must prove that the defendant knew that the possessed  
8 narcotics -- that he possessed narcotic drugs, the defendant  
9 knew that he possessed narcotic drugs, and that this possession  
10 was not due to carelessness, negligence, or mistake. As was  
11 the case with Counts Two and Three, the Government doesn't have  
12 to prove that the defendant knew the exact nature of the drugs  
13 in his possession. It's enough that the Government proves that  
14 the defendant knew that he possessed some kind of narcotic.

15 Now with respect to the third element, I've already  
16 instructed you on what the term "distribute" means. So apply  
17 that instruction.

18 The related crime of distribution consists of the  
19 following element:

20 First, that the defendant distributed narcotic drugs;  
21 and

22 Second, that the defendant distributed the narcotic  
23 drugs knowingly.

24 With respect to the first element, the Government must  
25 prove beyond a reasonable doubt that the substance at issue is

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1 actually cocaine, as I've just instructed you with respect to  
2 possession with the intent to distribute.

3 I've also instructed you on the term "distribute." So  
4 please apply that instruction here.

5 With respect to the second element, I've already  
6 instructed you on the term "knowingly." That instruction  
7 applies here as well.

8 So, to summarize, if you find that the defendant  
9 entered into an agreement to distribute or to possess with the  
10 intent to distribute cocaine and that he knowingly did so and  
11 intentionally did so, then you must find the defendant guilty  
12 of the crime charged in this Count Four. If, however, you find  
13 that the Government did not prove each element of the  
14 conspiracy beyond a reasonable doubt, then you have to reach a  
15 verdict of not guilty.

16 Now there's also a numbers quotient here. If you  
17 unanimously do find that the defendant is guilty beyond a  
18 reasonable doubt of the crime charged in Count Four, you must  
19 also determine whether the Government has established beyond a  
20 reasonable doubt that the amount of cocaine involved in the  
21 conspiracy attributable to this defendant as a result of his  
22 own conduct or the conduct of others reasonably foreseeable to  
23 him was at least 5 kilograms or more of a substance containing  
24 cocaine. You'll see that question also on the verdict sheet.

25 All right. Counts Five and Eight, I can handle

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1 together. They're all international distribution of cocaine  
2 counts, substantive crimes. They read in part that:

3 The defendant, together with others, did knowingly and  
4 intentionally distribute a controlled substance, intending and  
5 knowing that such substance would be unlawfully imported into  
6 the United States from a place outside thereof, which offense  
7 involved 5 kilograms or more of a substance containing cocaine,  
8 a Schedule II controlled substance.

9 Counts Five through Eight involve the same crime, but  
10 each crime charges a different event that occurred allegedly at  
11 a different time. Count Five charges the defendant with  
12 international distribution of at least 5 kilograms of cocaine  
13 in or about December, 2008.

14 Count Six charges the defendant with international  
15 distribution of at least 5 kilograms of cocaine in or about  
16 September, 2004.

17 And Count Seven charges the defendant with  
18 international distribution of at least 5 kilograms of cocaine  
19 in or about August, 2004, and September, 2004.

20 Count Eight charges the defendant with international  
21 distribution of at least 5 kilograms of cocaine in or about and  
22 between January, 2004, and March, 2004. So they're different  
23 time periods.

24 Because the law is the same, I'm going to instruct you  
25 on these charges simultaneously. The Government must prove as



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1 to each one beyond a reasonable doubt the following elements of  
2 the offense:

3 First, that the defendant distributed narcotic drugs;

4 Second, that the defendant distributed the narcotics  
5 drugs knowingly; and

6 Third, that the defendant distributed -- sorry -- that  
7 the defendant knew or intended that the narcotic drugs he  
8 distributed would be illegally imported into the United States.

9 With respect to the first element, the Government has  
10 to prove beyond a reasonable doubt that the substance at issue  
11 is actually cocaine. As was the case for Counts Two through  
12 Four, the Government can prove this through either direct or  
13 circumstantial evidence. I've also instructed you on the term  
14 "distribute." So apply that definition here.

15 With respect to the second element, I've also already  
16 instructed you on the term "knowingly." So that instruction  
17 can be applied here.

18 With regard to the third element, the Government has  
19 to prove beyond a reasonable doubt that the defendant knew that  
20 the cocaine would be or intended for the cocaine to be brought  
21 into the United States from somewhere outside the United  
22 States. The defendant does not need to be present in the  
23 United States, as long as the defendant knew that the cocaine  
24 would be distributed -- that he intended to distribute would be  
25 illegally imported into the United States.

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1           Again I've already told you what the terms "knowingly"  
2 and "intentionally" mean. So please apply those here.

3           If you don't find that the Government has satisfied  
4 its burden of proof with respect to each element of the  
5 offenses charged in Counts Five through Eight, you may still  
6 find that the Government has proven beyond a reasonable doubt  
7 that the defendant committed the crimes charged in those  
8 counts, if you find beyond a reasonable doubt that he aided and  
9 abetted their commission.

10           You remember I instructed you on aided and abetting,  
11 and you should apply those instructions here.

12           If you unanimously determine that the defendant is  
13 guilty beyond a reasonable doubt of any of the crimes charged  
14 in Counts Five through Eight, you also have to determine  
15 whether the Government established beyond a reasonable doubt  
16 that the offense involved at least 5 kilograms or more of  
17 cocaine as charged in the particular count that you're  
18 considering. Those questions will also be on your verdict  
19 sheet.

20           So, I've talked to you about direct liability. I've  
21 talked to you about conspiracy. I've talked to you about  
22 aiding and abetting. There's another theory of liability that  
23 the Government has for these substantive Counts Five, Six,  
24 Seven and Eight. It's what the lawyers called Pinkerton  
25 Liability. If you've ever heard of the Pinkerton Detective

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1 Agency, that's where it's from. This other method can be  
2 described at follows:

3 If you find beyond a reasonable doubt that the  
4 defendant was a member of the conspiracy charged in Count Two  
5 of the indictment and, thus, guilty on that conspiracy count,  
6 then you may, but you're not required to, find him guilty of  
7 the crimes charged against him in the corresponding Counts  
8 Five, Six, Seven, and Eight. To do so, however, you would have  
9 to find beyond a reasonable doubt each of the following  
10 elements as to the counts you are considering:

11 First, that the crime charged in the substantive  
12 counts was actually committed;

13 Second, that the person or persons you find actually  
14 committed the crime were members of the conspiracy that you  
15 found existed in Count Two, not some other conspiracy;

16 Third, that the substantive crime was committed  
17 pursuant to the common plan and understanding that you found to  
18 exist among the conspirators in Count Two; and

19 Fourth, that the defendant was a member of that  
20 conspiracy at the time that substantive crime, whether it's in  
21 Count Five, Six, Seven, or Eight, was, in fact, committed;

22 Fifth, you have to find that the defendant could have  
23 reasonably foreseen that the substantive crime might be  
24 committed by his co-conspirator.

25 If you find all five of these elements to exist beyond

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1 a reasonable doubt, then you may find the defendant guilty of  
2 the substantive crime you are considering, even if he did not  
3 personally participate in the acts concerning the crime or did  
4 not have actual knowledge of it.

5 The reason for this rule is simply that a  
6 co-conspirator who commits a substantive crime pursuant to a  
7 conspiracy is deemed to be the agent of the other conspirators.  
8 Therefore, all of the co-conspirators must bear criminal  
9 responsibility for the commission of the substantive crime  
10 committed by its member if these five elements that I've just  
11 read to you are satisfied. If, however, you're not satisfied  
12 as to the existence of any of these five elements, then you may  
13 not find the defendant guilty of the substantive crime, unless  
14 the Government proves beyond a reasonable doubt that he  
15 personally committed or aided and abetted the commission of the  
16 substantive crime charged.

17 I think we will take a short break for my voice, if  
18 nothing else; and then we'll circle back to Count One which, as  
19 you may recall from closing arguments, is the longest of the  
20 counts. Let's take until noon. Please do not start discussing  
21 the case amongst yourselves yet, not at all. Talk about the  
22 Super Bowl last night, talk about anything else, but not this  
23 case. See you in 15 minutes.

24 (Jury exits.)

25 THE COURT: Okay. Recess 15 minutes. I'm about

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1 two-thirds done, I think, maybe three-quarters.

2 (Recess.)

3 THE CLERK: All rise.

4 THE COURT: Okay. Bring in the jury.

5 (Jury enters.)

6 THE COURT: All right. Everyone be seated.

7 We're getting there, ladies and gentlemen. Should be  
8 done in time for lunch.

9 Let me now turn to Count One.

10 Okay. As is always the case when you have something  
11 to read, don't let it distract you from listening; but I  
12 thought, because the counts were complicated, this will help  
13 you follow along with that.

14 This count charges the defendant with conducting a  
15 Continuing Criminal Enterprise, CCE. Please pay close  
16 attention. It reads as follows:

17 In or about and between January, 1989, and September,  
18 2014, the defendant, together with others, did knowingly and  
19 intentionally engage in a Continuing Criminal Enterprise in  
20 that the defendant committed violations of Title 21, US Code,  
21 Sections 841(a), 846, 959(a), and 960(a), including Violations  
22 1 through 27 -- we're going to get to those violations, 1  
23 through 27 -- which violations were part of a continuing series  
24 of violations of those statutes undertaken by the defendant, in  
25 concert with five or more persons with respect to whom the

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1 defendant occupied a supervisory and management position, and  
2 was one of several principal administrators, organizers, and  
3 leaders of the Continuing Criminal Enterprise, and from which  
4 continuing series of violations the defendant obtained  
5 substantial income and resources, and which enterprise received  
6 in excess of \$10 million in gross receipts during one or more  
7 12-month period for the manufacture, importation, and  
8 distribution of cocaine.

9           The violations involved at least 300 times the  
10 quantity of substance described in the statute, that is, 150  
11 kilograms or more of a substance containing cocaine. The  
12 continuing series of violations as defined by the United States  
13 Code, Section 848(c), Title 21, Violation 1 charges the  
14 defendant with international cocaine distribution of 3200  
15 kilograms of cocaine in or about January, 2005.

16           Violation 2 charges the defendant with international  
17 cocaine distribution of 12,000 kilograms of cocaine in or about  
18 and between August, 2004, and September, 2004.

19           Violation 3 charges the defendant with international  
20 cocaine distribution of 10,500 kilograms of cocaine in or about  
21 and between August, 2004, and September, 2004.

22           Violation 4 charges the defendant with international  
23 cocaine distribution of 10,000 kilograms of cocaine in or about  
24 July, 2004.

25           Violation 5 charges the defendant with international

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1 cocaine distribution of 10,000 kilograms of cocaine in or about  
2 and between May, 2004, and June, 2004.

3 Violation 6 charges the defendant with international  
4 cocaine distribution of 800 kilograms of cocaine in or about  
5 April, 2004.

6 Violation 7 charges the defendant with international  
7 cocaine distribution of 10,000 kilograms of cocaine in or about  
8 and between March, 2004, and April, 2004.

9 Violation 8 charges the defendant with international  
10 cocaine distribution of 8,000 kilograms of cocaine in or about  
11 and between January, 2004, and March, 2004.

12 At this point, ladies and gentlemen, I'm going to let  
13 you read them over to yourself. I'll reference them, and then  
14 I'd like you to read each one to yourself. Everyone can see  
15 them clearly; is that right?

16 All right. So next we have Violation 9, 6465  
17 kilograms, January, 2004; Violation 10, 6,000 kilograms,  
18 November to December, 2003; Violation 11, 3600 kilograms,  
19 August, 2003, to September, 2003; Violation 12, 7300 kilograms,  
20 April 21, 1993; Violation 13, 450 kilograms, December, 2008;  
21 Violation 14, 8300 kilograms, October 1st, 2009, to October  
22 9th, 2009; Violation 15, 7500 kilograms between February 6th  
23 and February 7th, 2009; Violation 16, 4716 kilograms on or  
24 about September 13, 2008; Violation 17, 5,000 kilograms,  
25 September 9th through September 12th, 2008; Violation 18,

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1 19,000 kilograms, March 18, 2007; Violation 19, 403 kilograms,  
2 January 30th, 2014; Violation 20, 1,997 kilograms,  
3 January 28th, 2003; Violation 21, 1952 kilograms, August 16th,  
4 2002; Violation 22, 1923 kilograms, May 24th, 2002; Violation  
5 23 -- Violation 23, 1100 kilograms, September 15th, 1999;  
6 Violation 24, marijuana distribution, 409 kilograms,  
7 January 15th, 2012; Violation 25, 20 kilograms of heroin,  
8 November 13th, 2008; Violation 26, 926 kilograms of cocaine,  
9 May 11th, 1990; Violation 27, murder conspiracy between January  
10 of 1989 and September, 2014.

11 Now I'll note for the record that I have been  
12 displaying this list and will continue to display this  
13 instruction on the jury's monitors and on the Court's overhead  
14 screen.

15 Ladies and gentlemen, in effect, the Government has  
16 charged that the defendant has engaged in the business of  
17 trafficking of prohibitive drugs on a continuing serious,  
18 widespread, supervisory, and substantial basis. In order to  
19 meet its burden of proof on this offense, the Government must  
20 prove beyond a reasonable doubt the following five elements:

21 First, the defendant committed at least one felony in  
22 violation of the federal narcotics laws;

23 Second, this offense was part of a series of three or  
24 more offenses committed by the defendant in violation of the  
25 Federal narcotics laws.



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1           The parties can interrupt me if they think I'm wrong  
2 about this.

3           Ladies and gentlemen, you'll notice that in the first  
4 element it requires one narcotics violation; and in the second  
5 element it requires three or more narcotics offenses. I think  
6 the reason for that is because that second element could  
7 encompass narcotics misdemeanors, but it does not in this case.  
8 In this case it's only felonies. So what we're talking about,  
9 really I think Element One is out of the case; and what the  
10 jury has the find for this is three or more felony Federal  
11 narcotics violations.

12           Do the parties agree with that?

13           MR. BALAREZO: Yes.

14           MR. FELS: Yes.

15           THE COURT: Third is that the defendant committed the  
16 offenses in this series of violations in concert with five or  
17 more persons;

18           Fourth, the defendant occupied a position of  
19 organizer, supervisor, or manager with respect to these five or  
20 more persons; and

21           Fifth, the defendant obtained a substantial income or  
22 resources from this series of violation of Federal drug laws.

23           Now I'm going to instruction you in detail on each of  
24 these elements. As to the first, the Government has to prove  
25 beyond a reasonable doubt that the defendant committed at least

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1 one felony drug offense. Here, the Government has alleged that  
2 the defendant committed 27 separate felony violations of  
3 Federal narcotics laws. That's the bullet point list that I  
4 just listed for you.

5 Next, each of the alleged violations falls into one of  
6 three categories of offenses: International cocaine  
7 distribution -- hang on one second -- cocaine, heroin, and  
8 marijuana distribution and murder conspiracy. All those 27  
9 charges break up into one of those three categories.

10 To satisfy the first element of Count One, the  
11 Government has to establish beyond a reasonable doubt that the  
12 defendant committed one of those 27 violations because, as I  
13 just explained to you, in effect, since Count Two is  
14 overlapping, the Government has to prove that the defendant  
15 committed three narcotics felonies.

16 Violations 1 through 19 charge international cocaine  
17 distribution, and Violations 20 through 26 charge drug  
18 distribution. I've already instructed you on the elements of  
19 those crimes. So I'm not going to do that again. Go back to  
20 my earlier instruction.

21 I also instruct you that Violation 2 corresponds to  
22 Counts Six. Violation 3 corresponds to Count Seven. Violation  
23 8 corresponds to Count Eight. Violation 13 corresponds to  
24 Count Nine. So, in other words, ladies and gentlemen, these  
25 acts that are charged as violations in this Count One, they're

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1 also charged separately, some of them, in Count Seven, Count  
2 Eight, and Count Five and Count Six and Count Two -- Two, yeah.

3 Six, Seven, Eight, Five, those are the ones that have  
4 both a list of 27, is also in separate counts.

5 Thus, if you find that Government has proved beyond a  
6 reasonable doubt that the defendant is guilty of any of the  
7 offenses charged in Counts Five, Six, Seven or Eight of the  
8 indictment, then you should find that the first element of the  
9 continuing criminal enterprise has also been satisfied. You  
10 may also use the alternative method to evaluate the possible  
11 guilt of the defendant for Counts Five through Eight on which  
12 I've just instructed you to determine whether the Government  
13 has met its burden with respect to that first element.

14 This alternative method for evaluating the defendant's  
15 conduct also applies to the first 26 of the 27 violations in  
16 Count One which I just read or summarized for you.

17 Specifically, if in light of my instructions you  
18 unanimously find beyond a reasonable doubt that the defendant  
19 was a member of the conspiracies charged in Counts Two through  
20 Four of the indictment, then you may also, but you are not  
21 required to, find that he committed Violations 1 through 26 of  
22 Count One, provided that you find beyond a reasonable doubt  
23 each of the following elements as to the violation you are  
24 considering; and this goes back again to that Pinkerton  
25 Liability theory that I gave you before, ladies and gentlemen.

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1 It's the same elements, but I'll read them over.

2 First, that the crime alleged in the violation was  
3 committed;

4 Second, that the person or persons you find actually  
5 committed the crime were members of a conspiracy that you found  
6 existed in Counts Two through Four;

7 Third, the crime was committed pursuant to the common  
8 plan and understanding that you found to exist among the  
9 conspirators;

10 Fourth, the defendant was a member of that conspiracy  
11 at the time the crime alleged in the violation was committed;  
12 and

13 Fifth, that the defendant could have reasonably  
14 foreseen that the crime might be committed by his  
15 co-conspirators.

16 On this alternate theory, if you find that all five of  
17 these elements exist beyond a reasonable doubt, then you may  
18 but are not required to find that the defendant committed the  
19 violation of Count One that you're considering, even if you  
20 also find he did not personally participate in the acts  
21 constituting the crime or did not have actual knowledge of  
22 those acts.

23 If you use this alternative Pinkerton method to find  
24 that the defendant committed one or more violations, you should  
25 find that the first element of the continuing criminal

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1 enterprise charged in Count One has been satisfied. However,  
2 you're still going to need to consider the remaining four  
3 elements of the continuing criminal enterprise on which I have  
4 already instructed you.

5 The 27th violation is different. It charges that the  
6 defendant, while engaged in one or more of the narcotics  
7 conspiracies alleged in Counts Two through Four, knowingly and  
8 intentionally conspired to kill or caused the intentional  
9 killing of one or more persons, that is, persons who posed a  
10 threat to the Sinaloa Cartel. In order to prove this violation  
11 against the defendant, the Government must prove beyond a  
12 reasonable doubt the following elements of the offense:

13 First, that the defendant was engaged in a narcotics  
14 conspiracy as charged in Counts Two through Four;

15 Second, that the defendant knowingly and intentionally  
16 agreed with one or more persons to kill individuals or groups  
17 of persons who posed a threat to the Sinaloa cartel and those  
18 groups are informants -- and I'll leave the date to you --  
19 members of the Beltrán Leyva organization; members of the  
20 Carrillo Fuentes organization; members of Los Zetas; members of  
21 the Arellano Felix organization; members of Arellano Felix  
22 organization at Christine's Discotheque; Miguel Martinez  
23 Martinez; Ramón Arellano Felix and Rodolfo Carrillo Fuentes;  
24 Julio César Beltrán Quintero; Juan Pablo Ledezma; Roberto  
25 Velasco Bravo, Nemesio, Commander Rafita; José Luis Santiago

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1 Vasconcelos; Juan Ramón Zapata; Israel Rincon Martinez; Juan  
2 Guzmán Rocha; Jose Miguel Bastidas Manjarrez; Cesar Gastelum  
3 Serrano; Leopoldo Ochoa; Christian Rodriguez; Stephen Tello;  
4 Andrea Fernández Vélez; Manuel Alejandro Aponte Gómez;  
5 Francisco Aceves Uriás.

6 Now, the Government need not prove that the individual  
7 or group of persons who the defendant agreed to kill was, in  
8 fact, killed, only that there was an unlawful agreement to do  
9 so. You only need to find that the defendant agreed with one  
10 or more persons to kill at least one of the individuals or  
11 groups of persons who posed a threat to the Sinaloa Cartel so  
12 identified; but you must be unanimous as to that individual  
13 group of persons.

14 I've already instructed you on the terms "knowingly"  
15 and "intentionally." So, please apply those instructions  
16 there.

17 So, in other words, ladies and gentlemen, if you find  
18 the defendant is not responsibility for any of those people  
19 listed on this list, he has not violated this No. 27. If you  
20 find that any one person on this list was the object of the  
21 conspiracy and was, in fact, killed, then you can find him  
22 guilty of that Violation 27; but what you can't do -- and this  
23 is what I want to emphasize to you -- you can't have four of  
24 you think it was one person, four of you think it was another  
25 person, and four of you think it was a third person and then

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1 say, "Okay. We've got Violation 27." If you agree on one or  
2 more, you have to agree on one or more unanimously.

3 Am I clear about that?

4 JURORS: (Nod heads up and down.)

5 THE COURT: You'll see it's better when you read over  
6 the instructions.

7 Third, the Government has to prove that the agreement  
8 to kill individuals or groups of persons occurred because of  
9 and as part of the defendant engaging in a narcotics  
10 conspiracy. To prove this elements, the Government must  
11 establish that the agreement was related in some meaningful way  
12 to the drug conspiracy as charged in Counts Two through Four.  
13 For example, a defendant engaging in drug distribution who  
14 conspires to kill his or her spouse in a purely nondrug-related  
15 domestic dispute would not satisfy this element. It's got to  
16 be a part of the drug distribution.

17 You may find that the agreement was related to a drug  
18 conspiracy if you find that there was a connection between the  
19 defendant's role in the agreement and his participation in the  
20 conspiracy. It's not necessary for the Government to prove  
21 that this was the sole purpose or even the primary purpose for  
22 the agreement to kill individuals or groups of persons, just  
23 that there was some substantive connection between the  
24 defendant's role in the drug conspiracy and his role in the  
25 murder conspiracy.

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1 With respect to the second element of Count One, the  
2 Government must prove beyond a reasonable doubt that the  
3 violation the Governments established in the first element was  
4 one of a continuing series of violations of the Federal drug  
5 laws. A continuing series of violations is defined as three or  
6 more violations of the Federal drug laws committed over a  
7 definite period of time and related to each other in some way,  
8 as distinguished from isolated or disconnected acts. If you  
9 find three or more of the 27 charged violations proven as part  
10 of a continuing series, this element is met, so three or more  
11 of those 27 in order to meet that second element.

12 And I believe again -- the parties can correct me if  
13 I'm wrong -- each of those minimum of three has to be found  
14 unanimously.

15 Is that right?

16 MR. BALAREZO: Yes.

17 THE COURT: Okay. You've got to be unanimous as to  
18 each sub-event.

19 The verdict form I will give you will list each of the  
20 alleged violations of Federal drug laws alleged by the  
21 Government that you may consider in determining whether the  
22 Government has proven a continuing series of violations. You  
23 must consider the evidence separately with regard to each and  
24 render separate verdicts as to whether the Government has  
25 proven each alleged violation beyond a reasonable doubt.



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1           Again, as I just said, to find the defendant guilty,  
2           you must unanimously agree on which three specific violations  
3           constitute the continuing series of violations.

4           The third element that the Government has to prove  
5           beyond a reasonable doubt is that the defendant committed the  
6           continuing series of violations in concert with five or more  
7           persons. Those persons do not have to be named in the  
8           indictment. They could be anyone who you find beyond a  
9           reasonable doubt were persons with whom the defendant committed  
10          the violations. You do not have to find that the five or more  
11          persons acted together at the same time or that the defendant  
12          personally dealt with them together. You also do not have to  
13          find that the defendant had the same relationship with each of  
14          them.

15          The Government must, however, prove beyond a  
16          reasonable doubt that the defendant and at least five other  
17          persons were part of an agreement or a joint action to commit  
18          the continuing series of violations of the Federal drug laws.  
19          It's not necessary that you identify each of these five persons  
20          by their first and last names. Identifying them by their first  
21          names or street names is sufficient, as long as you determine  
22          that they are, in fact, five separate persons. You must  
23          unanimously agree on which five or more people the defendant  
24          committed the violations with.

25          The fourth element that the Government must prove

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1 beyond a reasonable doubt is that the defendant occupied the  
2 position of organizer, supervisor, or manager with respect to  
3 these five or more persons. In considering whether the  
4 defendant occupied such a position, you should give the words  
5 "organizer, supervisor, or manager" their ordinary, everyday  
6 meaning. The Continuing Criminal Enterprise law distinguishes  
7 between what amounts to employees of the enterprise and those  
8 who conceive of and coordinate the enterprise's activities.  
9 The Government does not need to prove that the defendant was  
10 the sole ringleader of the enterprise. An enterprise may have  
11 more than one organizer or ringleader. The Government meets  
12 its burden on this element if it proves beyond a reasonable  
13 doubt that the defendant exercised organizational, supervisory,  
14 or managerial responsibilities over the five or more persons.  
15 The Government need not prove that the same type of  
16 superior/subordinate relationship existed between the defendant  
17 and each of the people he allegedly organizes, supervises, or  
18 controls.

19 In considering whether the defendant occupied an  
20 organizational, supervisory, or managerial relationship with  
21 respect to five or more persons, you should consider evidence  
22 that might distinguish the defendant's position from that of an  
23 underling in the enterprise. Did the defendant negotiate  
24 large-scale purchases or sales of narcotics? Did he make  
25 arrangements for transportation of money washing? Did he

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1 instruct the participants in these transactions? These  
2 inquiries are not conclusive. They're simply the kinds of  
3 questions you should ask yourselves in thinking about the  
4 defendant's role in these activities and his relationship with  
5 other persons involved in them.

6 The fifth element the Government must prove beyond a  
7 reasonable doubt is that the defendant derives substantial  
8 income or resources from this continuing series of Federal drug  
9 law violations. The law does not set forth the minimum amount  
10 of money required to constitute substantial income, but it  
11 clearly intends to exclude trivial amounts derived from  
12 occasional narcotics sales. If you determine that the  
13 defendant received only small amounts of money or other  
14 insignificant gain from drug-related activity, then you must  
15 find him not guilty of Count One.

16 In considering whether the defendant derived  
17 substantial income or resources from the continuing series of  
18 drug law violations, you may consider the defendant's gross  
19 income and anticipated profits from these violations, as well  
20 as the net profits that he actually realized from them. You  
21 may also consider evidence from which you can infer a receipt  
22 of substantial income or resources such as lavish spending with  
23 no visible legitimate source of income. Keep in mind, however,  
24 that the Government must prove that the defendant actually  
25 obtained substantial income from his narcotics activities and

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1 that, as with all other element of the offense, the Government  
2 must prove this element beyond a reasonable doubt.

3 If you determine that the defendant is guilty beyond a  
4 reasonable doubt of the crime charged in Count One, you will  
5 also be asked to indicate on the verdict sheet whether the  
6 Government has proven beyond a reasonable doubt that, first,  
7 the defendant was at least one of the principal administrators,  
8 organizers, or leaders of the continuing criminal enterprise;  
9 and, second, that at least one violation involved at least  
10 150 kilograms of cocaine or that the enterprise received \$10  
11 million in gross receipts during any 12-month period of its  
12 existence for the manufacture, importation, or distribution of  
13 cocaine.

14 With respect to the first question, I instruct you  
15 that the Government does not need to prove that the defendant  
16 was the sole principal administrator, organizer, or leader of  
17 the continuing criminal enterprise. An enterprise may have  
18 more than one principal administrator, organizer, or leader.  
19 You should give the terms "principal administrator, organizer,  
20 or leader" their everyday meaning as you would in a public or  
21 business community.

22 All right. We're on to Count Nine. Count Nine  
23 charges the defendant with using or carrying a firearm during  
24 the commission of a drug trafficking crime as charged in Counts  
25 One through Four. It reads in relevant part:

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1 In or about and between January, 1989, and September,  
2 2014, the defendant, together with others, did knowingly and  
3 intentionally use and carry one or more firearms during and in  
4 relation to one or more drug trafficking crimes, that is, the  
5 crimes charged in Counts One through Four, and did knowingly  
6 and intentionally possess such firearms in furtherance of said  
7 drug trafficking crimes, one or more of which firearms was  
8 brandished and discharged or one or more of which firearm was a  
9 machine gun.

10 This count is to be considered only if you find the  
11 defendant guilty of at least one of the drug trafficking crimes  
12 charged in Counts One, Two, Three, or Four. If upon all the  
13 evidence you find that the Government has failed to prove  
14 Counts One through Four beyond a reasonable doubt, then you  
15 cannot proceed any further on Count Nine. In reaching your  
16 verdict on Count Nine, you may consider the evidence of Counts  
17 One through Four only for the purpose of determining whether  
18 the elements of Count Nine have been satisfied. You may not  
19 consider for the purpose of Count Nine any evidence that  
20 relates to any other counts than Counts One through Four.

21 The Government has to prove each of the following  
22 elements beyond a reasonable doubt to sustain its burden of  
23 proving the defendant guilty as to Count Nine:

24 First, that the defendant committed a drug trafficking  
25 crime for which he might be prosecuted in a court of the United

JURY CHARGE

1 States as charged in Counts One, Two, Three, or Four; and

2 Second, that the defendant knowingly used or carried a  
3 firearm during and in relation to the commission of or  
4 knowingly possessed a firearm in furtherance of the drug  
5 trafficking crimes charged in Counts One, Two, Three or Four.

6 As to the first element, the defendant is charged in  
7 Counts One through Four with engaging in a continuing criminal  
8 enterprise and narcotics conspiracy. I instruct you that the  
9 those crimes are, in fact, drug trafficking crimes; but it's  
10 for you determine if the Government has proven beyond a  
11 reasonable doubt that the defendant committed the crimes  
12 charged in Counts One through Four.

13 As for the second element, I instruct you that a  
14 firearm is any weapon that will, or is designed to, or may  
15 readily be converted to expel a projectile by the action of an  
16 explosive. I also instruct you that a gun is a firearm.

17 To prove that the defendant used the firearm, the  
18 Government must prove beyond a reasonable doubt that an active  
19 employment of the firearm by the defendant during and in  
20 relation to the commission of the drug trafficking crime.

21 Let me look at that sentence a second.

22 (Brief pause.)

23 THE COURT: I think the word "that" should be dropped.

24 Do the parties agree with me?

25 MS. PARLOVECCHIO: Yes, Your Honor.

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1 MR. BALAREZO: Sure.

2 THE COURT: I'm going to read that sentence again.

3 To prove that the defendant used the firearm, the  
4 Government must prove beyond a reasonable doubt an active  
5 employment of the firearm by the defendant during and in  
6 relation to the commission of the drug trafficking crime. This  
7 does not mean that the defendant must actually fire or attempt  
8 to fire the weapon, although those would obviously constitute  
9 uses of the weapon. Brandishing, displaying, or even referring  
10 to the weapon so that others present knew that the defendant  
11 had the firearm available, if needed, all constitute use of the  
12 firearm. However, the mere possession of a firearm at or near  
13 the site of a crime without active employment, as I just  
14 described it, is not sufficient to constitute use of a firearm.

15 To prove that the defendant carried the firearm, the  
16 Government must prove beyond a reasonable doubt that the  
17 defendant had the weapon within his control in such a way that  
18 it furthered the commission of the drug trafficking crime or  
19 was an integral part of the commission of the crime. The  
20 defendant did not necessarily have to hold the firearm  
21 physically, that is, have actual possession of it on his  
22 person. If you find that the defendant had dominion and  
23 control over the place where the firearm was located and had  
24 the power and intention to exercise control over the firearm in  
25 such a way that it furthered the commission of a drug

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1 trafficking crime, you may find that the Government has proven  
2 that the defendant carried the weapon.

3 To prove that the defendant possessed a firearm in  
4 furtherance of the crime, the Government must prove that the  
5 defendant had possession of the firearm and such possession was  
6 in furtherance of that crime.

7 Possession means that the defendant either had  
8 physical possession of the firearm on his person or that he had  
9 dominion and control over the place where the firearm was  
10 located and had the power and intention to exercise control  
11 over the firearm.

12 To possess a firearm in furtherance of the crime means  
13 that the firearm helped forward, advance, or promote the  
14 commission of the crime. The mere possession of the firearm at  
15 the scene of the crime is not sufficient under this definition.  
16 The firearm must have played some part in furthering the crime  
17 in order for this element to be satisfied.

18 To satisfy this element, you must also find that the  
19 defendant used, carried, or possessed the firearm knowingly.  
20 This means that he carried the firearm purposely and  
21 voluntarily and not by accident or mistake. It also means that  
22 he knew that the weapon was a firearm as we commonly use the  
23 word. However, the Government is not required to prove that  
24 the defendant knew that he was breaking the law. You may also  
25 find the defendant guilty of Count Nine if the Government has



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1 proven beyond a reasonable doubt that the defendant aided and  
2 abetted another in using or carrying a firearm during and in  
3 relation to or in possessing a firearm in furtherance of a drug  
4 trafficking crime.

5 To find the defendant guilty as an aider and abettor  
6 on this count, however, it's not enough to simply find beyond a  
7 reasonable doubt that defendant knew that a firearm would be  
8 used, carried, or possessed during the commission of the  
9 underlying crime of violence or drug trafficking crime.

10 Rather, there are two additional requirements that apply to  
11 aiding and abetting the use, carrying, or possession of a  
12 firearm. In order to find the defendant guilty of aiding and  
13 abetting the use or carrying of a firearm during and in  
14 relation to or possession of a firearm in furtherance of a drug  
15 trafficking crime, you must find that the defendant (1) took an  
16 affirmative act in furtherance of that offense and (2) with the  
17 intent of facilitating the offense's commission.

18 A person takes an affirmative act in furtherance of an  
19 offense if he facilitates, that is, if he acts to help or  
20 assist or make possible any part, though not necessarily every  
21 part, of the crime. An affirmative act includes all assistance  
22 rendered by words, acts, encouragement, support, or presence.  
23 As a result, in the context of aiding and abetting the use of  
24 or carrying of a firearm during and in relation to or  
25 possession of a firearm in furtherance of a crime of violence

JURY CHARGE

1 or drug trafficking crime, a person takes the necessary  
2 affirmative act if he facilitates the use, carrying, or  
3 possession of a firearm or commission of the crime of violence  
4 or drug trafficking crime. It is not necessary that the person  
5 facilitates both the possession of the firearm and a crime of  
6 violence or drug trafficking crime.

7 A person acts with required intent if he knowingly  
8 associates himself in some way with the crime and participates  
9 in the crime by doing some act to help make the crime succeed.  
10 This intent requirement is satisfied when a person actively  
11 participates in a criminal venture with full knowledge of the  
12 circumstances constituting the charged offense. In the context  
13 of aiding and abetting the use or carrying of a firearm during  
14 and in relation to or possession of a firearm in furtherance of  
15 a drug trafficking crime, a person acts with the requisite  
16 intent if he had advance knowledge that a confederate would use  
17 or carry a firearm during and in relation to, or possess a  
18 firearm in furtherance of, a drug trafficking crime.

19 "Advance knowledge" means knowledge at a time the  
20 person can attempt to alter the plan or withdraw from the  
21 enterprise. Knowledge of the gun may, but doesn't have to,  
22 exist before the underlying crime is begun. It is sufficient  
23 if the knowledge is gained in the midst of the underlying  
24 crime, as long as the individual continues to participate in  
25 the crime and has a realistic opportunity to withdraw.

JURY CHARGE

1           You may but need not infer that the defendant had  
2 sufficient foreknowledge if you find that defendant continued  
3 his participation in the crime after learning about the use,  
4 carrying, or possession of a gun by a confederate.

5           If you determine that the defendant is guilty beyond a  
6 reasonable doubt of the crime charged in Count Nine, you'll  
7 also be asked to indicate on the verdict sheet whether the  
8 Government has proven beyond a reasonable doubt that the  
9 defendant brandished or discharged the firearm.

10           To brandish a firearm means to display all or part of  
11 the firearm or otherwise make the presence of the firearm known  
12 to another person in order to intimidate that person,  
13 regardless of whether the firearm is directly visible to that  
14 person.

15           You may also find that the Government has proven  
16 beyond a reasonable doubt that the defendant brandished or  
17 discharged a firearm if he aided and abetted the brandishing or  
18 discharging of a firearm during and in relation to a drug  
19 trafficking crime. I have already instructed you on the law of  
20 "aiding and abetting." So please apply those instructions  
21 here.

22           When I instruct you that to aid and abet in the  
23 brandishing or discharging of a firearm, the defendant need not  
24 have advance knowledge that a confederate would actually  
25 brandish or discharge the firearm. This requirement is

JURY CHARGE

1 satisfied if the defendant knew that the confederate intended  
2 to brandish or discharge a firearm to intimidate if the need  
3 arose.

4           You will also see a question on the verdict sheet  
5 about whether the defendant committed this offense using a  
6 machine gun. The term "machine gun" is defined as any weapon  
7 which shoots, is designed to shoot, or can readily be restored  
8 to shoot automatically more than one shot without manual  
9 reloading by a single function of the trigger. A trigger is  
10 any mechanism used to initiate the firing sequence. The term  
11 "machine gun" also includes the frame or receiver of any such  
12 weapon, any parts designed and intended solely and exclusively,  
13 or a combination of parts designed and intended for use in  
14 converting a weapon into a machine gun and any combination of  
15 parts from which a machine gun can be assembled, if such parts  
16 are in the possession or under the control of a person.

17           The last count is Count Ten. This is the money  
18 laundering count, ladies and gentlemen, conspiracy to launder  
19 the proceeds of narcotics transactions. It reads in relevant  
20 part:

21           In or about and between January, 1989, and September,  
22 2014, the defendant, together with others, did knowingly and  
23 intentionally conspire to (1) conduct one or more financial  
24 transactions in and affecting interstate and foreign commerce,  
25 to wit, the transfer and delivery of U.S. currency, which

JURY CHARGE

1 transactions, in fact, involved the proceeds of specified  
2 unlawful activity, to wit, narcotics trafficking, knowing that  
3 the property involved in the transactions represented the  
4 proceeds of some form of unlawful activity (A) with the intent  
5 to promote the carrying on of a specified unlawful activity and  
6 (B) knowing that the transactions were designed in whole and in  
7 part to conceal and disguise the nature, the location, the  
8 source, the ownership, and the control of the proceeds of the  
9 specified unlawful activity, and to avoid one or more  
10 transaction reporting requirements, contrary to Title 18, U.S.  
11 Code, 1956(a)(1)(B) and (2) transport, transmit, and transfer  
12 money instruments and funds from a place in the United States  
13 to and through one or more places outside the United States, to  
14 wit, Mexico and Colombia (A) with the intent to promote the  
15 carrying on of the specified unlawful activity and (B) knowing  
16 that the funds represented the proceeds of some form of  
17 unlawful activity and knowing that the transportation,  
18 transmission, and transfer were designed in whole and in part  
19 to conceal and disguise the nature, the location, the source,  
20 the ownership, and the control of the proceeds of the specified  
21 unlawful activity and to avoid one or more transaction  
22 reporting requirements.

23 Now, that's enough. I've already instructed you on  
24 the law of conspiracy. So please apply those instructions  
25 here.

JURY CHARGE

1 Before you may convict the defendant of the money  
2 laundering conspiracy charged in this Count Ten, the Government  
3 must prove the following elements beyond a reasonable doubt:

4 First, that two or more persons entered into an  
5 unlawful agreement to launder money; and

6 Second, that the defendant knowingly and intentionally  
7 became a member of that conspiracy.

8 Please apply my prior instructions on those terms.

9 With respect to the first element, the agreement to  
10 commit an unlawful act, the underlying crime of money  
11 laundering has several elements. I remind you that the  
12 defendant is not charged with actually committing the unlawful  
13 act of money laundering but rather with conspiring to commit  
14 it. I will describe for you the elements of this unlawful act  
15 so you can understand what the Government must prove was the  
16 objective of the conspiracy.

17 First, the defendant conducted or attempted to conduct  
18 a financial transaction involving property that was the  
19 proceeds of drug trafficking offenses;

20 Second, the defendant knew that the property involved  
21 in the financial transaction was the proceeds of some form of  
22 unlawful activity;

23 Third, the proceeds were transferred from Mexico to  
24 the United States, the United States to Mexico, or the United  
25 States to Colombia; and

JURY CHARGE

1 Fourth, that the defendant acted with the intent to  
2 promote the carrying on of the drug trafficking offenses or  
3 that the transportation, transmission, or transfer of funds  
4 were designed in whole or in part to conceal and disguise the  
5 nature, the location, the source, the ownership, or the control  
6 of the proceeds of drug trafficking.

7 Now, I'm going to give you a number definitions for  
8 these terms.

9 The term "conducts" includes initiating, concluding,  
10 participating, and initiating or concluding a transaction.

11 A transaction includes a purchase, sale, loan, pledge,  
12 gift, transfer, delivery, or other disposition of property.

13 The term "financial transaction" means a transaction  
14 involving a financial institution which is engaged in or the  
15 activities of which may affect interstate or foreign commerce  
16 in any way or degree where a transaction which in any way or  
17 degree affects interstate or foreign commerce and involves the  
18 movement of funds by wire or other means or involves one or  
19 more monetary instruments.

20 A transaction involving a financial institution  
21 includes a deposit, withdrawal, inter-account transfer,  
22 purchase, or sale of any monetary instrument or any other  
23 payment transfer or delivery by, through, or to a financial  
24 institution by any means.

25 The term "interstate or foreign commerce" means

JURY CHARGE

1 commerce between any combination of states, territories, or  
2 possessions of the United States or between the United States  
3 and a foreign country.

4 The term "monetary instrument" includes, among other  
5 themes, coin or currency of the United States or any other  
6 country, personal checks, travelers checks, cashiers checks,  
7 bank checks, money orders, investment securities or negotiable  
8 instruments in bearer form, or otherwise in such form that the  
9 title passes upon delivery.

10 The term "proceeds" means any property derived from or  
11 obtained or retained directly or indirectly through some form  
12 of unlawful activity, including the gross receipts of such  
13 activity.

14 Proceeds can be any kind of property, not just money.

15 Finally, the term "specified unlawful activity" means  
16 any one of a variety of offenses designed by the statute. In  
17 this case -- defined find by the statute.

18 In this case the Government has alleged that the funds  
19 in question were the proceeds of drug trafficking offenses. I  
20 instruct you that as a matter of law drug trafficking falls  
21 within that definition. However, it's for you to determine  
22 whether the funds were the proceeds of that unlawful activity.

23 With respect to the second element, the Government  
24 must prove that the defendant knew that the property involved  
25 in the financial transaction represented proceeds from some



JURY CHARGE

1 form, though not necessarily which form, of activity that  
2 constitutes a felony under Federal, state, or foreign law.  
3 Thus, the Government doesn't have to prove that the defendant  
4 specifically knew that the property involved in the transaction  
5 represented the proceeds of any specific drug trafficking  
6 transaction. The Government only has to prove that the  
7 defendant knew it represented the proceeds of some illegal  
8 activity that was a felony.

9 I instruct you that the drug trafficking offenses  
10 charged in the indictment are all felonies under federal law.

11 With respect to the third element, the term "transfer"  
12 has its ordinary and everyday meaning.

13 With respect to the fourth element, the Government  
14 must prove beyond a reasonable doubt that the defendant acted  
15 with intent to promote the carrying on of the drug trafficking  
16 offense. I already told you what the term "intentionally"  
17 means, and that instruction applies here.

18 So, to summarize, if you find that the defendant  
19 entered into an agreement to launder money and that he did so  
20 knowingly and intentionally, then you must find him guilty of  
21 the crime charged in Count Ten. If, however, you find that the  
22 Government did not prove each element of the conspiracy beyond  
23 a reasonable doubt, then you must reach a verdict of not  
24 guilty. Your decision as to whether the defendant conspired to  
25 launder money, like your decision on each count, must be

JURY CHARGE

1 unanimous.

2 All right. There's one short section I need to read  
3 you, ladies and gentlemen. When I say short, I mean it's  
4 really short. For those of you who are a little intimidated by  
5 the instruction that you just heard, I will tell you, having  
6 done this with jurors many times, when you go back, you have a  
7 copy of these instructions and you start working through the  
8 evidence, it will become more clear to you. So don't be  
9 worried about that.

10 All right. Now that I've instructed you on the law  
11 and the process by which you should weigh the evidence and  
12 determine the facts, I'm going to give you a little guidance  
13 for your deliberations. The first thing you're going to have  
14 to do is select a foreperson. I'm afraid there's no more money  
15 it in. Don't get into a big fight over it. The foreperson  
16 doesn't get paid any more. They have no real power. All  
17 they're charged with doing is being the focal point of the  
18 communications with the Court during deliberations so that, if  
19 there's a question the jury has, the foreperson will write it  
20 down on a piece of paper, sign that person's name, and hand it  
21 to the marshal that will be standing outside your door.

22 Once I have your note, I'm going to have you come back  
23 to the courtroom; and I will address you collectively, all of  
24 you, not just the foreperson.

25 If you do send out a notice with a question of any

JURY CHARGE

1 kind, you must not tell me or anyone else how you stand  
2 numerically on the issue of the defendant's guilt, not even  
3 when you come into open court. I don't want to know what it  
4 is, the split is this way, the split is that way. When you  
5 reach a unanimous verdict, that's when we know what you've  
6 done. Until then, it's all work for you.

7 Now with regard to the exhibits and testimony, my plan  
8 is to send almost all the exhibits into the jury room with you  
9 so that you will be able to refer to them and use them. There  
10 are obviously some things we can't send in. There are some  
11 audiotapes that they may not have transfer for. There were  
12 some physical items. If you want to listen to anything, you  
13 can let us know; and we'll bring you back in here and play it  
14 in the courtroom.

15 We can also have portions of the trial testimony read  
16 back to you when you have questions about that. We're happy to  
17 do that; but do keep in mind, with a trial this long, it can be  
18 very difficult to find the particular portion that you're  
19 looking for in the transcript. So, when there's something you  
20 want to know, try to specify what witness was it and what the  
21 specific topic was that you want to hear on so that we can go  
22 back to the transcript and try to find it for you as quickly as  
23 possible, even though I will tell you it generally takes a  
24 little bit of time to find it.

25 You know, the purpose of jury deliberations is to

JURY CHARGE

1 discuss and consider the evidence, to listen to the arguments  
2 of your fellow jurors, to present your individual views, to  
3 consult with one another, and to reach an agreement based on  
4 the evidence presented, if you can do so without violence to  
5 your own individual judgment.

6 Don't hesitate to change your opinion if, after  
7 discussion with your fellow jurors, your opinion seems wrong.  
8 If, however, after having carefully considered all the evidence  
9 and the arguments of your fellow jurors, you still entertain a  
10 conscientious view that differs from the others, you're not to  
11 yield your conviction simply because you're outnumbered. Your  
12 final vote must reflect your conscientious judgment as to how  
13 the issues should be decided.

14 Your job is to reach a fair conclusion from the law  
15 and the evidence. Each of you has to decide the case for  
16 yourself, after you consider the evidence with your fellow  
17 jurors. If the Government succeeds in meeting its burden of  
18 proof beyond a reasonable doubt, your verdict should be guilty.  
19 If the Government fails to meet that burden, your verdict  
20 should be not guilty. Either way, as I've mentioned several  
21 times, your verdict has to be unanimous. All of you must reach  
22 the same conclusion as to each charge and, as to the continuing  
23 criminal enterprise charge that's Count One, three violations,  
24 although you can reach a unanimous verdict of not guilty on one  
25 or more charges and guilty on the other charges.

JURY CHARGE

1           When you reach a unanimous verdict, here is the way  
2 it's going to work. Your foreperson will write a note on a  
3 piece of paper or on pieces paper that says, "We have reached a  
4 unanimous verdict," signed Foreperson. You will hand that note  
5 to the marshal outside your door. By that time you will have  
6 also completed the verdict sheet that I will have sent in with  
7 you. It basically goes through each charge and all of the  
8 things you have to find or not find, and it's quite  
9 self-explanatory. Don't send this out of the jury room. Just  
10 sent out the note that says, "We have reached a unanimous  
11 verdict." Hold this close to you, whoever the foreperson is.

12           I'll then bring you in the courtroom; and I will say  
13 to you, "Is it correct that you have reached a unanimous  
14 verdict?" If your foreperson tells me "yes," at that point  
15 I'll have the foreperson give the completed verdict form that  
16 you will have completed and signed to Ms. Clark. She will give  
17 it to me.

18           Remember that the parties and I are relying on you to  
19 give full and conscientious deliberation and consideration to  
20 the issues in evidence before you. The oath you took when you  
21 started this case sums up your duty; and that is, without fear  
22 or favor, you will truly try the issues between these parties  
23 according to the evidence given to you in court under the laws  
24 of the United States.

25           All right. Can we have the court officer come

JURY CHARGE

1 forward, please?

2 Before we do that, let me just see counsel at sidebar  
3 briefly.

4 (Sidebar.)

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JURY CHARGE

1 (Sidebar.)

2 THE COURT: This is not an opportunity to back-strike  
3 or think of objections that could have been thought of before;  
4 but if there's anything that I misread in the charge that you  
5 think needs to be clarified, let me know.

6 MS. PARLOVECCHIO: Yes, Your Honor, just a few things.

7 THE COURT: A few things?

8 MS. PARLOVECCHIO: I'm sorry. One, I would just --  
9 sorry. It's in the instruction but maybe just clarify for the  
10 jurors. Whoever the foreperson is, they should include their  
11 juror number and not their name.

12 THE COURT: Right.

13 MS. PARLOVECCHIO: The second thing is, I think when  
14 you're explaining the concept of unanimity for Violation 27,  
15 the murder conspiracy --

16 THE COURT: Yeah.

17 MS. PARLOVECCHIO: -- I think you inadvertently stated  
18 that the victim on which they find unanimity must be -- was, in  
19 fact, killed, which is contrary to the instruction.

20 THE COURT: I thought I said that. Then I thought,  
21 "That wasn't right"; but then I thought, "They'll correct me if  
22 I'm wrong."

23 MS. PARLOVECCHIO: Yes.

24 And then finally this is a much more minor point.  
25 When you're explaining the concept of venue --

JURY CHARGE

1 THE COURT: Yeah.

2 MR. FELS: -- you said when you're deciding the issue  
3 of whether or not he was brought here involuntarily is to be  
4 decide by a preponderance. Since they don't have to make a  
5 finding of voluntariness or involuntariness as to how the  
6 defendant got here, it's just a bit confusing.

7 THE COURT: Anything from defense?

8 MR. BALAREZO: No, Your Honor.

9 But we did want to renew our objection to the  
10 848(e)(1) instruction.

11 THE COURT: It's been made throughout. As far as I'm  
12 concerned, it's preserved.

13 MR. BALAREZO: Very well. Thank you.

14 MS. PARLOVECCHIO: Thank you, Your Honor.

15 (Sidebar concludes.)  
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JURY CHARGE

1 (In open court.)

2 THE COURT: Okay. Three slight corrections I need to  
3 make, ladies and gentlemen. It shouldn't take me very long to  
4 do that.

5 First, when you send out notes, remember do not use  
6 your name. Use just your juror number. Okay? It might be a  
7 natural tendency to write your name, but don't do that. Use  
8 your number.

9 Second, in charging you on Count One, the 27 acts -- I  
10 think it was 27 -- I mistakenly said that the object of the  
11 murder conspiracy had to actually be killed. That is not the  
12 case. There does not have to be an actual death. You will see  
13 that in the instructions. I read it wrong to you. Okay.

14 And then, third, on the venue point, it doesn't matter  
15 how the defendant got to this District, if he got to this  
16 District, whether it was voluntary or involuntary. You have to  
17 find -- to find venue properly is that he did, in fact, get or  
18 was brought to this District.

19 Anything else from the parties?

20 MR. BALAREZO: (Shakes negatively.)

21 MS. PARLOVECCHIO: No, Your Honor.

22 MR. BALAREZO: No, Your Honor.

23 THE COURT: All right. Let's have the court officer  
24 come forward, please.

25 (Court Security Officer was sworn.)

JURY CHARGE

1 (Marshal was sworn.)

2 THE COURT: All right. I'd like the first two rows of  
3 jurors to go with the court officer and begin deliberations.

4 I want to talk to the third row some more.

5 (Jury exits at 1:05 p. m.)

6 THE COURT: All right. Everyone be seated.

7 Ladies and gentlemen, you have likely surmised that  
8 you are designated as alternate jurors for the case. That does  
9 not mean we're done with you by any means. The fact of the  
10 matter is it's not at all uncommon that one or more of you will  
11 become necessary to the deliberation process as this goes on.  
12 So, we're going to keep you within the family for now as we  
13 find out when and if that becomes necessary.

14 So, what we're going to do is I'm going to put you in  
15 a separate room with a separate lunch. I am going to repeat  
16 the instruction to you that you can't talk about the case yet  
17 because you're not deliberating. I know that will be hard, but  
18 you really must adhere to that. If you are brought into the  
19 case, the jury will start all over so you won't have missed  
20 anything.

21 We have arranged for entertainment for you while you  
22 wait. I hope you'll like it. I think there should be enough  
23 there to interest everybody, and we really appreciate the fact  
24 that, even though, as I say, you all knew you were alternates,  
25 you all paid excellent attention to this case throughout and

JURY CHARGE

1 the parties recognize it. I recognized it. I think everyone  
2 did. So I'll ask you to retire now. Ms. Clark will take you  
3 to a separate room, and we will talk to you shortly.

4 (Alternate jurors exit.)

5 THE COURT: All right. Be seated.

6 What I'd like to have happen is my practice, as I told  
7 the jury, is to send in all the exhibits. Obviously there are  
8 some exhibits we're not sending in. There's a story about that  
9 I'll tall the lawyers off the record.

10 But do put everything together. Agree between you  
11 what should be there. Then Ms. Clark will bring it in to them.

12 Did we decide to send in the indictment? Did we  
13 redact or revise the indictment?

14 MS. PARLOVECCHIO: We did redact and revise, Your  
15 Honor; but we decided against sending it back during the charge  
16 conference.

17 THE COURT: Okay. Because it's in the charge anyway.

18 And the verdict form, of course, the copy of the  
19 instructions we will also provide.

20 All right. Anything else?

21 MS. PARLOVECCHIO: Not from the Government, Your  
22 Honor.

23 THE COURT: All right. Stand by, if the lawyers will  
24 join me off the record at sidebar.

25 (Sidebar discussion off the record.)

PROCEEDINGS

1 (In open court, outside the presence of the jury at 2:05 p. m.)

2 THE CLERK: All rise.

3 THE COURT: Have a seat, please.

4 We have received two notes from the jury.

5 MR. BALAREZO: Your Honor, I'm sorry. We -- I'll  
6 translate in the meantime, but we don't have an interpreter. I  
7 apologize. I thought they were in the courtroom.

8 THE COURT: We'll wait.

9 (Pause in proceedings.)

10 THE COURT: How are the parties doing on getting their  
11 exhibits together?

12 MS. HONIGMAN: We're getting several --

13 MR. BALAREZO: We're reviewing the other side's right  
14 now.

15 THE COURT: Okay. We've been joined by the  
16 interpreter.

17 THE INTERPRETER: Thank you, Your Honor.

18 THE COURT: We have received two notes from the jury.

19 What we've marked as Court Exhibit Number I is the  
20 first note. It says as follows: "Is a 'drug war' considered  
21 part of a drug trafficking crime? (With specific reference to  
22 the weapons charge.)"

23 (Pause in proceedings.)

24 THE COURT: Ideas, Government?

25 MS. PARLOVECCHIO: I'm sorry, Your Honor. I think the

PROCEEDINGS

1 answer to that would be yes because violation 27, of Count 1  
2 charges the various groups of Beltrán Leyva organization  
3 members, Carrillo Fuentes organization members --

4 THE INTERPRETER: I'm sorry, counsel. I can't  
5 understand you. Just start back with various groups.

6 MS. PARLOVECCHIO: Various groups, including the  
7 Beltrán Leyva organization members, the Carrillo Fuentes  
8 organization members, et cetera.

9 If the jury finds Violation 27, as one of the  
10 continuing series of violations in Count 1, then, the answer to  
11 their question would be yes, the drug wars would constitute one  
12 of the underlying offenses for Count 9.

13 THE COURT: So your proposal is that I answer the  
14 jury, "yes," is that right?

15 MS. PARLOVECCHIO: I think it might have to be a  
16 little more nuance than just "yes."

17 THE COURT: Give me your proposed nuance.

18 MS. PARLOVECCHIO: Could we draft some language, Your  
19 Honor, to see if defense counsel agree.

20 MR. BALAREZO: Your Honor, we would disagree with a  
21 "yes" answer.

22 As to the question as written, I don't think we can  
23 answer that. I think at best, the Court can say that it is for  
24 the jury to determine, without giving a yes or no answer.

25 MR. LICHTMAN: And I think the point is well taken is

PROCEEDINGS

1 it is up to them to determine whether the so-called drug war is  
2 part of that count.

3 MS. PARLOVECCHIO: Your Honor, I think we can provide  
4 some more clarification without usurping their decision as to  
5 whether or not it can be one of the things that they're going  
6 to rely upon in finding guilty under Count 9.

7 MR. BALAREZO: Your Honor, I think giving them a yes  
8 answer, it usurps their authorities. That's why if they have  
9 any further questions, they can come back with another note,  
10 rather than short circuit on the process right now.

11 MR. LICHTMAN: Or we can conceivable read the part of  
12 the charge that relates to that. There is no reason to give  
13 them a legal answer when they have got instructions.

14 THE COURT: Would the parties like a few minutes to  
15 think about it?

16 MS. PARLOVECCHIO: Yes, please, Your Honor.

17 THE COURT: Okay. We'll recess for five minutes, but  
18 I do want to give them an answer.

19 On the second question, it's a little easier. Court  
20 Exhibit Number 2 is a note that says, "Can we please get jury  
21 charge and verdict sheet for every juror? If not, more?"

22 I would recommend giving them multiple sets of  
23 instructions and one verdict sheet stamped "master," and the  
24 rest worksheets for all of them.

25 MS. PARLOVECCHIO: We have no objection to all that,

PROCEEDINGS

1 Your Honor.

2 MR. BALAREZO: No objection.

3 THE COURT: All right. We'll start on that while  
4 you're seeing if you can agree on some language to give them.

5 MS. PARLOVECCHIO: Thank you, Your Honor.

6 (Recess.)

7 THE CLERK: All rise.

8 THE COURT: Have a seat.

9 Okay. I have the Government's proposal, which I'm  
10 going to mark as Court Exhibit 3. It's not -- it's a little  
11 too government friendly, I think. It leads the jury just where  
12 the Government would like them to go.

13 But the first part I think is appropriate because keep  
14 in mind, the question the jurors have asked in this note is  
15 with specific reference to the weapons charge.

16 So what they're asking about is, can I find that the  
17 drug war is a drug trafficking crime and use that for the  
18 predicate to the weapons charge, and because I think they may  
19 be putting the horse before the cart on this that, I'm  
20 inclined to give them something like what the Government  
21 proposed, which says -- without necessarily referring them back  
22 to the instructions because I think the instructions are clear  
23 enough, I would say something like, after reading them their  
24 note, "Keep in mind, ladies and gentlemen, that you can only  
25 consider Count 9 if you find that the defendant is guilty of

PROCEEDINGS

1 Counts 1, 2, 3 or 4. In considering whether the defendant is  
2 guilty of Counts 1, 2, 3 or 4, you may, if you choose, consider  
3 evidence of the drug wars, but it remains the Government's  
4 burden to meet each of the respective elements for those counts  
5 and to prove them beyond a reasonable doubt."

6 That kicks them back to where they ought to be in the  
7 first place, and I think they have possibly strayed from it,  
8 looking for a shortcut.

9 MS. PARLOVECCHIO: We have no objection to that, Your  
10 Honor.

11 MR. LICHTMAN: Your Honor, I want to have it -- if you  
12 could just repeat the second part, the you may consider  
13 evidence.

14 THE COURT: Let me have the court reporter read it  
15 back. I probably won't ever say it that I well again.

16 Oh, wait. I've got it. I've got it.

17 I would read them their note, and then I would say to  
18 them, "Ladies and gentlemen, keep in mind that you may only  
19 consider Count 9 if you find that the defendant is guilty of  
20 Counts 1, 2, 3, or 4. In considering whether the defendant is  
21 guilty of Counts 1, 2, 3 or 4, you may, if you choose, consider  
22 evidence of the drug wars but it remains the Government's  
23 burden to meet each of the respective elements for those  
24 counts, and to prove each beyond a reasonable doubt.

25 MR. LICHTMAN: Judge, what if they asked for a



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1 definition of the drug wars? I mean, you start having a  
2 slippery slope and they may ask that next to define that. I  
3 would just leave it with what we discussed before: It's up to  
4 them to apply the evidence as they see fit. What if they think  
5 the drug war had nothing at all to do with the protecting the  
6 Sinaloa Cartel.

7 THE COURT: That's why I'm giving them the option of  
8 saying if you think it's appropriate. It's their  
9 determination. That part, I'm taking from you. I'm not  
10 saying, you should consider the drug wars on Counts 1, 2, 3,  
11 and 4. I'm saying you may.

12 MR. LICHTMAN: Well, the problems is when they ask the  
13 next question, how do you define drug war?

14 THE COURT: Then I'd probably say to them, well, you  
15 used it. What do you mean by it? But I think we should cross  
16 that bridge if we come to it. I think it's pretty clear.

17 MR. LICHTMAN: I just hate to tell them that we have  
18 an understanding of what the drug war is, when we don't know  
19 what their understanding of the drug war is maybe different  
20 than our understanding.

21 MR. BALAREZO: And Your Honor, again, I think our  
22 response should be more general at this point. If -- I do  
23 believe that if they have any more questions, they'll come  
24 right back, but to go right away and tell them -- it's obvious  
25 that they can consider it, first of all. I don't think they

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1 need to be told. But we're just getting ahead of ourselves and  
2 we've already I think starting to invade the providence of the  
3 jury.

4 THE COURT: Is there any question about what they mean  
5 by drug wars?

6 MR. BALAREZO: We're directing them to Violation 27.

7 THE COURT: No, no, no, no. I'm not doing that. I'm  
8 not taking that from the Government. I think you're right.  
9 That would be too specific. So I'm not going to do that. I'm  
10 directing them to Counts 1, 2, 3 and 4.

11 MR. LICHTMAN: Then why direct them at all, Judge?

12 THE COURT: They have asked a question, and they may  
13 be confused into thinking there is a shortcut to answering  
14 charge Count 9, when there isn't. They've got to go to 1, 2, 3  
15 and 4. I think they've got to know that.

16 MR. LICHTMAN: Well, could we just say that, before  
17 you can consider Count 9, you need to start with 1, 2, 3 and 4,  
18 and leave it at that?

19 THE COURT: But then we haven't answered their  
20 question, which is, can evidence of the drug wars be considered  
21 part of a drug trafficking crime?

22 MR. LICHTMAN: I just wouldn't want to presume what  
23 their understanding and definition of drug wars is.

24 THE COURT: What could it be? I think the record only  
25 admits to one explanation.

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1 MR. LICHTMAN: I mean, look, juries see things perhaps  
2 differently than lawyer.

3 THE COURT: Let's think of a way they could see it, so  
4 we could say, oh, that's different than we would see it.

5 MR. LICHTMAN: I think you can say any evidence at all  
6 in the case that you heard could be considered in Counts 1, 2,  
7 3 or 4.

8 MS. PARLOVECCHIO: Your Honor, that explanation would  
9 not answer the jurors' question. I think the language that you  
10 proposed is sufficiently clear, and it answers the question,  
11 and directs them to the correct counts to march through in  
12 order to make a finding on Count 9.

13 MR. LICHTMAN: But you're presuming what their  
14 understanding of drug wars.

15 THE COURT: I know, but no one is giving me a possible  
16 alternative explanation than that which we all know it is.

17 MR. LICHTMAN: They could have given something more  
18 specific, more specific than drug wars.

19 MR. BALAREZO: Yeah. There was more than one drug war  
20 that was mentioned anyway.

21 THE COURT: They used plural.

22 MR. BALAREZO: It is plural?

23 THE COURT: Actually, no. It's singular. You're  
24 right.

25 MR. BALAREZO: There's multiple drug wars, so which

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1 one are they talking about?

2 THE COURT: The way it's plural -- it's singular in a  
3 collective concept. Is a drug war -- not is the drug war -- is  
4 a drug war considered part of a drug trafficking crime, as a  
5 general matter.

6 I think the answer is, as Mr. Lichtman suggested when  
7 we first met, if you think so, jury, that's up to you to  
8 decide. I think that's what I'm going to go with.

9 Okay. In the meantime, we have now received another  
10 note, which we marked as Court Exhibit Number 4.

11 I should mention, by the way, that the foreperson is  
12 Juror Number 11.

13 And the question is -- it's a two-fold question. The  
14 first part is, "How long until we get the evidence and  
15 pictures?" I will tell them imminently.

16 And the second part, Is Ephedrine considered as  
17 Methamphetamine?

18 MS. PARLOVECCHIO: It is a precursor to  
19 methamphetamine, Your Honor.

20 THE COURT: I know the answer. What do we tell them?

21 MR. LICHTMAN: It's not meth.

22 MS. PARLOVECCHIO: Your Honor, may we -- we'll consult  
23 the Code and can provide factually correct and legally correct  
24 answer to the question.

25 MR. LICHTMAN: Coca leaves is not cocaine. Ephedrine

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1 is not meth.

2 THE COURT: But they're asking a slightly different --  
3 it's not a precise equivalence question: Is Ephedrine  
4 considered as methamphetamine, which means -- well, it depends  
5 for what purpose, right?

6 MS. PARLOVECCHIO: Correct. It depends on the charge  
7 under which they're considering it. Certainly, a conspiracy to  
8 manufacture methamphetamine would not necessarily encompass  
9 possession of Ephedrine with the intent to produce  
10 methamphetamine.

11 MR. BALAREZO: That's the problem right there, Your  
12 Honor. We're starting to speculate as to what the jury is  
13 asking. We can't do that.

14 THE COURT: Why don't I say, "Ephedrine is not  
15 methamphetamine, but it is a component."

16 MR. BALAREZO: I would object to that.

17 THE COURT: Is that wrongful factually?

18 MS. PARLOVECCHIO: No, it's factually correct, Your  
19 Honor. There was tons of evidence about it during this trial.

20 MR. BALAREZO: It's factually correct, but --

21 THE COURT: I think I might answer that by saying, "I  
22 have to refer you to the record to determine the relationship  
23 between ephedrin and methamphetamine."

24 MS. PARLOVECCHIO: We have no objection to that, Your  
25 Honor.

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1 THE COURT: Let's have the jury.

2 MR. BALAREZO: Could we just clarify what the  
3 response would be to the note number 1?

4 THE COURT: Yes. I think I read it.

5 MR. BALAREZO: Is it the one that you read because at  
6 the end, you said you'll get what Mr. Lichtman suggests.

7 THE COURT: I think that's in there. It's going to  
8 imply. You don't have to consider drug wars as evidence of the  
9 drug crime, but you may. It will be something like that.  
10 We'll see how it comes out.

11 (Pause in proceedings.)

12 MR. LICHTMAN: Judge, I would just say again that you  
13 may, if you choose, consider any of the evidence that you've  
14 heard. I just object to the term "drug wars," because we're  
15 presuming we have the same understanding.

16 THE COURT: But I'm just telling them -- I will say,  
17 consider evidence of the drug wars or any other evidence that  
18 you think is relevant to those charges.

19 MS. PARLOVECCHIO: That's fine. We have no objection.

20 MR. LICHTMAN: We couldn't just leave it, you can  
21 consider any of the evidence?

22 THE COURT: I feel obliged to respond to their  
23 question. I think there's no ambiguity by what think mean by  
24 drug wars.

25 MS. PARLOVECCHIO: I agree. There's multiple drug

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1 wars in the jury charge, if they have any question as to which  
2 one.

3 THE COURT: I'm going to stick to that, Mr. Lichtman.

4 MR. LICHTMAN: Judge, do we ask them what they believe  
5 the drugs wars are?

6 THE COURT: I don't want to get into a dialogue with  
7 the jurors because some of the jurors may think one think one  
8 thing. Some may think another.

9 MR. LICHTMAN: But we're basically agreeing that we  
10 have the same understanding as to what drugs wars are.

11 THE COURT: But there is no reason to poll the jurors  
12 individually as to their understanding. I think it's clear  
13 enough what this means. It answers their question it doesn't  
14 limit them to any particular piece of evidence. It doesn't  
15 point them to anyone's particularly theory. I think it's as  
16 neutral as it could be.

17 (Jury enters.)

18 THE COURT: All right. Everyone be seated.

19 Ladies and gentlemen, we have your several notes. Let  
20 me address them one at a time.

21 Your first note says, "Is a drug war considered part  
22 of a drug trafficking crime?" New sentence, "With specific  
23 reference to the weapons charge?"

24 Let me answer that question this way. The weapons  
25 charge, I'm sure you understand is Count 9. You can only

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1 consider Count 9, if you first find that the defendant is  
2 guilty of either Counts 1, 2, 3, or 4.

3 Now, in considering whether the defendant is guilty of  
4 Counts 1, 2, 3 or 4, you may, if you choose, consider evidence  
5 of the drug wars or any other evidence in the record that you  
6 think is appropriate, but you've got to find, if you're going  
7 to convict on any of those Counts 1, 2, 3, or 4, that the  
8 Government with that evidence has met its burden of proving  
9 each of the elements beyond a reasonable doubt.

10 All right? So don't get to 9 until you get to either  
11 1, 2, 3 or 4, and if you don't convict on 1, 2, 3 and 4, you  
12 never get to 9? Okay? That's your first note.

13 Your second note is, "Can we please get jury charge  
14 and verdict sheet for every juror?" And the answer is yes,  
15 we're preparing that for you. We're going to stamp one verdict  
16 form as master and we'll give you 12 others, so you can all  
17 keep scratch pads, but then at the end, you'll fill out the  
18 master verdict form and that will be the one that becomes the  
19 official record of the court.

20 And then your third question -- actually, two of them:  
21 "How long until we get the evidence and pictures?"  
22 Momentarily. We're just putting it together. We should have  
23 it in just a moment.

24 And then the second part of that question, "Is  
25 ephedrin considered as methamphetamine?" For that, I've got to



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1 refer you to the record. That was explored at trial and that's  
2 something for you to determine, not for me to instruct you on.

3 Okay. I believe that answers your questions. We'll  
4 ask you to continue your deliberations.

5 (Jury exits at 2:47 p. m.)

6 THE COURT: Okay. We'll be in very recess until the  
7 next note.

8 (Recess.)

9 (In open court, outside the presence of the jury at 4:15 p. m.)

10 THE CLERK: All rise.

11 THE COURT: All right. Everyone be seated.

12 We have received a note from the jury that says, Court  
13 Exhibit 5, "We would like to leave our usual -- at our usual  
14 time today, 4:15 p.m. Thank you."

15 Any problems sending them home?

16 MR. ROBOTTI: No, Judge. Thank you.

17 THE COURT: It will take a minute to line them up, so  
18 don't stand up yet. We'll bring them.

19 I'm also going to tell them that obviously, they can't  
20 deliberate while they're not all together in the room there.  
21 They can't deliberate on the way home, but I'm not going to  
22 bring them in tomorrow morning to start deliberations. I'm  
23 just going to tell them when all 12 of them get there, that's  
24 when they can start deliberating. Is that okay with everybody?

25 MS. PARLOVECCHIO: Yes, Your Honor.

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1 THE COURT: I'm also inclined to tell them that if  
2 necessary, they're going to sit on Friday.

3 MR. BALAREZO: Do they have a choice?

4 THE COURT: No. If they fought me hard on it, I might  
5 reconsider, but if we're still going Friday, I want them to  
6 keep at it.

7 (Jury enters.)

8 THE COURT: All right. Everyone be seated.

9 Ladies and gentlemen, we have your note saying that  
10 you'd like to leave now. That's, of course, fine. For future  
11 reference, you're also welcome to stay as late as you want.

12 I'm going to give you the usual admonitions about  
13 staying away from media and not talking to anybody about the  
14 case, particularly at this very delicate stage. Don't do any  
15 research about the case. Don't look up anything. Don't post  
16 anything on social media. And in addition, I have a couple of  
17 other instructions for you, now that we're at this stage.

18 First, as you go home tonight, once you leave this  
19 courtroom, do not talk about the case amongst yourselves at  
20 all. Your deliberations are over once I dismiss you for the  
21 evening, and you can't talk about it whatsoever. That also  
22 includes on your way back in tomorrow morning, you cannot talk  
23 about the case on your way in, even if you're with other  
24 jurors.

25 The only time you can start re-deliberating or start

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1 your deliberations anew is when the first two rows, the 12 of  
2 you are back behind that room there. When you're all there,  
3 whatever time you're there, you can start deliberating, but if  
4 you're not all there, then you cannot start deliberating.

5 Okay? Everybody clear?

6 And I continue to beg the indulgence of the last row.  
7 I hope it's not too dull yet.

8 I also did want to tell everyone if necessary, we will  
9 sit next Friday. I don't know if it will be necessary or not,  
10 but if necessary, we will.

11 All right. Have a very good evening. Thank you for  
12 your hard work. See you tomorrow morning.

13 JUROR: Judge, this Friday?

14 THE COURT: This Friday.

15 JURORS: Oh, this Friday?

16 (Jury exits.)

17 THE COURT: All right. Anything else we need to  
18 cover?

19 (No response.)

20 THE COURT: See you tomorrow for more of the waiting  
21 game.

22 (Trial adjourned to February 5, 2019, at 9:30 a. m.)  
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24  
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